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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97–131–3]

Horses From Qatar; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of horses to remove Qatar from the list of regions the Animal and Plant Health Inspection Service considers affected with African horse sickness. This action is based on information received from Qatar and is in accordance with the standards set by the Office International des Epizooties for recognizing a country as free of African horse sickness. This action relieves restrictions on the importation of horses into the United States from Qatar.

EFFECTIVE DATE: January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prescribe the conditions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS is a fatal equine viral disease that is not known to exist in the United States.

In § 93.308 of the regulations, paragraph (a)(2) lists regions that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS and sets forth specific quarantine requirements for horses that are imported from those regions. APHIS requires horses intended for importation from any of the regions listed, including horses that have stopped in or transited those regions, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This precaution is necessary to help ensure that the horses are not affected with AHS.

On May 12, 1998, we published in the **Federal Register** (63 FR 26099–26100, Docket No. 97–131–1) a proposal to amend the regulations by removing Qatar from the list of regions in § 93.308(a)(2) that APHIS considers affected with AHS. The proposed action was based on information received from Qatar and standards set by the Office International des Epizooties (OIE).

We solicited comments concerning our proposal for 60 days ending July 13, 1998. On January 14, 1999, we published in the **Federal Register** (64 FR 2449, Docket No. 97–131–2) a notice reopening and extending the comment period until February 16, 1999. During the comment period, we received comments from two industry representatives.

Both commenters stated that APHIS should have performed an on-site evaluation to verify the information Qatar submitted to support its request to be declared free of AHS, and one commenter stated that he could not support the proposed rule because an on-site evaluation was not performed.

The United States is a signatory to the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). Basic to NAFTA and GATT are the provisions to encourage countries to base their sanitary and phytosanitary measures on international standards. Animal health measures should be based on OIE standards. Based on the standards set forth by the OIE, a country may be recognized as free of AHS if the following conditions are satisfied: (1) The country requires that AHS be reported; (2) the country has not vaccinated domestic horses or other equines against the disease during the past 12 months; and (3) the country has no clinical, serological (in nonvaccinated animals), or epidemiological evidence of AHS for the past 2 years. Qatar exceeds these requirements. Qatar requires reporting of AHS, has not had a recorded case of AHS for over 30 years, and has not vaccinated for the disease during this period.

In addition to the OIE standards, APHIS considered Qatar's horse population, quarantine requirements, disease surveillance system, laboratory capabilities, and geography.

Qatar has approximately 1,500 horses, and the majority of these horses are maintained at Government-funded equestrian and racing club stables or at a small number of stud farms. Qatar allows the temporary importation of registered competition horses from member States of the European Union (EU) to compete in Qatar with unimpeded return to the country of origin immediately after competition. However, competition horses that enter under temporary importation rules are maintained in Government-funded facilities with strict movement controls, health monitoring, and vector control. In addition, Qatar imports horses for purposes other than competition under special conditions only from countries that meet the export requirements of EU countries. Qatar has quarantine and testing requirements for these horses.

Qatar conducts continuous AHS serum surveys in its domestic horses. Currently, there is not a diagnostic laboratory in Qatar that is capable of isolating and typing the virus that causes AHS; however, Qatar sends samples from its ongoing AHS surveys to the Institute for Animal Health at the Pirbright Laboratory in the United Kingdom. In addition, all horses that are known to have died or are euthanized in Qatar are routinely autopsied, and reports are submitted to the Chief Veterinary Officer. If an infectious disease is suspected, all animals that were in contact with the suspect animal are isolated and monitored. If AHS were suspected, blood, pleural effusions, and tissue samples would be obtained and submitted for testing.

Qatar is a small land mass that extends from the eastern edge of the Arabian peninsula. Qatar is surrounded on the north, east, and south by water and has a small land border shared with

Saudi Arabia, which is recognized by the OIE as AHS free. The land border is strictly controlled by the Government of Qatar.

APHIS also evaluated Qatar's veterinary service infrastructure and the animal health policies and infrastructures for animal disease control. Our review of information submitted by Qatar indicates that these infrastructures and policies are adequate for disease control.

Both commenters stated that the supplementary information that Qatar submitted should have been made available to the public for review.

Such information was available from the person listed under **FOR FURTHER INFORMATION CONTACT**. In addition, we now publish on the Internet supporting documentation provided by a region when it requests a change in its disease status; however, the request for Qatar was submitted before these procedures were in place. The Internet address is http://www.aphis.usda.gov/vs/reg-request.html. This Internet address can be accessed by the public. The public may also call or write the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves restrictions that require horses imported from Qatar to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This rule allows horses from Qatar to be shipped to and quarantined at ports designated in § 93.303 and reduces the quarantine period to an average of 3 days to meet the quarantine and testing requirements specified in § 93.308. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule will recognize Qatar as free of AHS. This action will allow horses from Qatar to be shipped to and quarantined at ports designated in § 93.303 and will reduce the quarantine and testing period to an average of 3 days to meet quarantine requirements specified in § 93.308.

U.S. importers of competition and breeding horses from Qatar will be affected by this rule. These importers will no longer be required to quarantine horses from Qatar for 60 days at the New York Animal Import Center in Newburgh, NY, at a cost of approximately $5,296 per horse.

In 1998, the United States imported 41,876 horses, valued at $206 million. However, there have been no horses imported into the United States from Qatar since 1992. Removing the requirement for a 60-day quarantine for horses from Qatar will make the importation of these horses less expensive and logistically easier. As a result, we anticipate that U.S. importers might begin importing horses from Qatar. However, because the horse population in Qatar in 1998 was approximately 1,500 head, we do not expect that the number of horses exported to the United States will be significant. In fact, in 1997, Qatar exported only 10 horses. Furthermore, most horses imported from Qatar will probably be in the United States on a temporary basis for particular events, such as for races or breeding, and then transported back to Qatar. For these reasons, we anticipate the overall economic effect on U.S. entites will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This 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.

Paperwork Reduction Act

This 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 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.308 [Amended]

2. In § 93.308, paragraph (a)(2) is amended by removing ''Qatar;''.

Done in Washington, DC, this 21st day of December 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–219 Filed 1–4–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–91–AD; Amendment 39–11493; AD 99–27–12]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109A and A109A II Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Agusta Model A109A and A109A II helicopters, that currently requires, before further flight, inspecting any tail rotor blade (blade) with 400 or more hours time-in-service (TIS) for a crack and replacing any cracked blade before further flight. This amendment contains the same requirements as the current AD but corrects the paragraph that requires ''replacing any cracked blade with an unairworthy blade.'' This amendment is prompted by the need to correct the requirement to mandate

''replacing any cracked blade with an airworthy blade.'' The actions specified by this AD are intended to prevent fatigue failure of the blade, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective January 5, 2000. The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 4, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–91–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard A. Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On December 9, 1999, the FAA issued AD 99–26–13, Amendment 39–11472, Docket No. 99–SW–64–AD, effective January 4, 2000, to require inspecting any tail rotor blade, part number (P/N) 109–0132–02 (all dash numbers), with 400 or more hours TIS for a crack and replacing any cracked blade with an airworthy blade. That action was prompted by three reports of cracked blades and two reports of separation of a tail rotor gearbox. That condition, if not corrected, could result in fatigue failure of a blade, loss of the tail rotor, and subsequent loss of control of the helicopter.

Agusta S.p.A. issued Bollettino Tecnico 109–110, dated July 28, 1999 (technical bulletin), which supersedes Telegraphic Technical Bulletin 109–5, dated January 27, 1987. The technical bulletin specifies dye-penetrant inspecting any blade, P/N 109–0132–02 (all dash numbers), with 400 or more hours TIS, for a crack before further flight and thereafter at intervals not to exceed 100 hours TIS. The technical bulletin also specifies visually inspecting each blade before the first flight of each day and replacing any cracked blade. In the technical bulletin, the manufacturer reemphasizes the importance of performing a detailed inspection of the blade by publishing additional procedures and requirements for personnel conducting the inspections. Agusta S.p.A. is attempting to develop an improved blade, which would provide a basis for terminating the inspection requirement.

Since the issuance of that AD, the FAA has discovered that the requirement in paragraph (b) of AD–99–26–13 mandates replacing a cracked blade with an *unairworthy* blade. This was an error. The requirement should mandate that any cracked blade be replaced with an *airworthy* blade.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model A109A and A109A II helicopters of the same type design, this AD supersedes AD 99–26–13, effective January 4, 2000. This AD corrects the mistake in AD 99–26–13 and requires that any cracked blade be replaced with an airworthy blade. This AD also requires dye-penetrant inspecting any blade, P/N 109–0132–02 (all dash numbers), with 400 or more hours TIS, for a crack before further flight and thereafter at intervals not to exceed 100 hours TIS. Also, this AD requires visually inspecting each blade before the first flight of each day. The actions are required to be accomplished in accordance with the technical bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, dye-penetrant inspecting each blade for a crack is required before further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 54 helicopters will be affected by this AD, that it will take approximately 2.5 work hours to accomplish the inspections, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,600 assuming 6 dye penetrant inspections a year.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–91–AD.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11472 and by adding a new airworthiness directive (AD), Amendment 39–11493, to read as follows:

AD 99–27–12 Agusta S.p.A.: Amendment 39–11493. Docket No.99–SW–91–AD. Supersedes AD 99–26–13, Amendment 39–11472, Docket No. 99–SW–64–AD.

Applicability: Model A109A and A109A II helicopters, with tail rotor blade (blade), part number (P/N) 109–0132–02-all dash numbers, with 400 or more hours time-in-service (TIS), installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of a blade, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, dye-penetrant inspect each blade for a crack in accordance with the Compliance Instructions, Part I, of Agusta S.p.A. Bollettino Tecnico 109–110, dated July 28, 1999 (technical bulletin). Thereafter, at intervals not to exceed 100 hours TIS, dye-penetrant inspect each blade for a crack in accordance with the Compliance Instructions, Part III, of the technical bulletin. If a crack is found, replace the cracked blade with an airworthy blade before further flight.

(b) Before the first flight each day, visually inspect each blade for a crack using a 3 to 5 power magnifying glass in accordance with the Compliance Instructions, Part II, of the technical bulletin. If a crack is found, replace the cracked blade with an airworthy blade before further flight.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(d) Special flight permits will not be issued.

(e) The inspections shall be done in accordance with the Compliance Instructions of Agusta S.p.A. Bollettino Tecnico 109–110, dated July 28, 1999. The incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 4, 2000. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 5, 2000.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano, Italy, AD 99–325, dated August 2, 1999.

Issued in Fort Worth, Texas, on December 27, 1999.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 00–17 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–54]

Amendment to Class E Airspace; Estherville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Estherville Municipal Airport, Estherville, IA. A review of the Class E Airspace area for Estherville Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC., April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before February 29, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–54, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Dot Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Estherville, IA. A review of the Class E airspace for Estherville Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Estherville

Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a sale-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–ACE–54.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Estherville, IA [Revised]

Estherville Municipal Airport, LA
(Lat. 43°24′27″N., long. 94°44′47″W.)
Estherville VOR
(Lat. 43°24′33″N., long. 94°44′40″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Estherville Municipal Airport and within 2.6 miles each side of the 172° radial of the Estherville VOR extending from the 6.5-mile radius to 7.4 miles south of the airport and within 2.6 miles each side of the 340° radial of the Estherville VOR extending from the 6.5-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on December 21, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–153 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–13–FR]

Amendment to Class E Airspace: Leonardtown, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet Above Ground Level (AGL) at St. Mary's County Airport (2W6), Leonardtown, MD. Amendments to the Standard Instrument Approach Procedures (SIAP) both GPS and VOR

Rwy-11 have made this action necessary. Amendments to the controlled airspace extending upward from 700 Feet Above Ground Level (AGL) are needed to accommodate the SIAP's and for Instrument Flight Rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 26, 1999, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by extending the Class E airspace extending upward from 700 feet above the surface at St. Mary's County Airport, Leonardtown, MD was published in the **Federal Register** (64 FR 37610). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999 and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet AGL for aircraft executing SIAPs at St. Mary's County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep then operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administrations amends 14 CFR part 71 as follows:

PART 71—AMENDED

1. The authority citation for 14 CFR Part 71 continues to read a follows:

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of earth

* * * * *

AEA MD E5, Leonardtown, MD [Revised]

St. Mary's County Airport
(lat. 38°18′56″N., long. 76°33′06″W.)
Patuxent VORTAC
(lat. 38°17′16″N., long. 76°24′01″W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of St. Mary's County Airport and within 4 miles of each side of the Patuxent VORTAC 293° radial from the 6.3 mile radius of the St. Mary's County Airport to 22 miles northwest of the Patuxent VORTAC.

* * * * *

Issued in Jamaica, New York on December 27, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 00–152 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29884; Amdt. No. 1966]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure

Standards Branch (AMCAFS–240), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 23, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective January 27, 2000*

Little Rock, AR, Adams Field, NDB RWY 4L, Amdt 19
Little Rock, AR, Adams Field, ILS RWY 4L, Amdt 25
Little Rock, AR, Adams Field, ILS RWY 22R, Amdt 1
Mosinee, WI, Central Wisconsin, ILS/DME RWY 35, Orig

** * * Effective February 27, 2000*

Point Lay, AK, Point Lay LRRS, GPS RWY 5, Orig
Point Lay, AK, Point Lay LRRS, GPS RWY 23, Orig
Point Lay, AK, Point Lay LRRS, NDB RWY 5, Orig
Louisville, KY, Louisville Intl-Standiford Field, ILS RWY 29, Amdt 22A, CANCELLED
Houlton, ME, Houlton Intl, GPS–A, Orig
Wiscasset, ME, Wiscasset, GPS RWY 7, Amdt 1
Wiscasset, ME, Wiscasset, GPS RWY 25, Amdt 1
Norwood, MA, Norwood Memorial, LOC RWY 35, Amdt 8
Norwood, MA, Norwood Memorial, NDB RWY 35, Amdt 8
Norwood, MA, Norwood Memorial, GPS RWY 35, Orig
Marquette, MI, Marquette County, VOR OR GPS RWY 8, Amdt 2A, CANCELLED
Marquette, MI, Marquette County, VOR OR GPS RWY 26, Amdt 2A, CANCELLED
Marquette, MI, Marquette County, LOC BC RWY 26, Amdt 9A, CANCELLED
Marquette, MI, Marquette County, ILS RWY 8, Amdt 10, CANCELLED
Pine River, MN, Pine River Regional, NDB RWY 34, Orig
Atlantic City, NJ, Atlantic City Intl, VOR/DME RWY 22, Amdt 5
Albany, NY, Albany Intl, VOR/DME RWY 28 Orig, CANCELLED
Albany, NY, Albany Intl, VOR RWY 28 Orig
Newburgh, NY, Stewart Intl, VOR/DME RNAV OR GPS RWY 16, Amdt 2A, CANCELLED
Newburgh, NY, Stewart Intl, VOR/DME RNAV OR GPS RWY 27, Amdt 1A, CANCELLED
Newburgh, NY, Stewart Intl, COPTER ILS 092, Orig
Newburgh, NY, Stewart Intl, GPS RWY 16, Orig
Newburgh, NY, Stewart Intl, GPS RWY 27, Orig
Concord, NC, Concord Regional, VOR/DME OR GPS–A, Amdt 1B, CANCELLED
Waverly, OH, Pike county, NDB RWY 25, Orig

Columbia, SC, Columbia Metropolitan, ILS RWY 5, Amdt 1
Rock Hill, SC, Rock Hill/York County/ Bryant Field, VOR/DME RNAV RWY 2, Amdt, 4E, CANCELLED
Mitchell, SD, Mitchell Muni, ILS/DME RWY 30, Amdt 2A, CANCELLED
Mitchell, SD, Mitchell Muni, ILS RWY 30, Orig
Baytown, TX, RWJ Airpark, GPS RWY 32, Orig
Galveston, TX, Galveston Intl-Scholes Field, GPS RWY 13, Amdt 1
Galveston, TX, Galveston Intl-Scholes Field, GPS RWY 17, Amdt 1
Houston, TX, George Bush Intercontinental Airport/Houston, ILS RWY 27, Amdt 3
Houston, TX, George Bush Intercontinental Airport/Houston, GPS RWY 27, Amdt 1
Brigham City, UT, Brigham City, GPS RWY 34, Orig

The FAA published the following procedure in Docket No. 29863; Amdt No. 1964 to Part 97 of the Federal Aviation Regulations (Vol 64, No. 243, Page 71018, Dated December 20, 1999) under § 97.23 effective January 27, 2000 which is hereby rescinded:

Ankeny, IA, Ankeny Regional, VOR/ DME RWY 36, Orig

[FR Doc. 00–180 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket OST–96–1880]

RIN 2105–AC28

Nondiscrimination on the Basis of Disability in Air Travel

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule; correction.

SUMMARY: On March 4, 1998, the Department of Transportation published final rules amending its regulations implementing Air Carrier Access. This document corrects a minor editorial error in that document. The correction does not change the substance of the regulatory provision involved.

EFFECTIVE DATE: January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); 202–366–9313 (fax); bob.ashby@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: The Department is making an editorial correction to its March 4, 1998, final rule amending 14 CFR part 382, which implements the Air Carrier Access Act. The final rule provision in question involved a clarification to the general prohibition on discrimination. Codified as 49 CFR 382.7(c), it provides as follows:

> Carriers shall, in addition to meeting the other requirements of this part, modify policies, practices, or facilities as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program.

One disability group pointed out that the word ''or'' in the second line of the paragraph should more properly be ''and''. While we do not believe that, in this context, changing ''or'' to ''and'' has any substantive significance in terms of the actual obligations of carriers, we will make the change in order to avoid any possible confusion about the provision. Consequently, we are amending this paragraph to substitute ''and'' for ''or''.

The Department finds that there is good cause to issue this correction without a prior notice and opportunity for comment. The underlying substantive provision was previously the subject of notice-and-comment rulemaking. The Department would not anticipate receiving any useful public comment on this editorial correction. Therefore, the Department finds that it would be impracticable, unnecessary, and contrary to the public interest to go through a notice-and-comment process to fix a minor editorial mistake. For the same reason, we find good cause to make this correction effective immediately.

This is a nonsignificant rule under both Executive Order 12886 and the Department's regulatory policies and procedures. The Department certifies, under the Regulatory Flexibility Act, that the rule will not have a significant economic effect on a substantial number of small entities. This is because we anticipate that this amendment will have no economic effects (nor, for that matter, any other kinds of effects) on anyone. It does not have Federalism impacts sufficient to warrant the preparation of a Federalism impact statement. It does not impose information collection requirements.

List of Subjects in 49 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Issued this 23rd day of December, 1999, at Washington, DC.

Robert C. Ashby,

Deputy Assistant General Counsel for Regulation and Enforcement.

For the reasons set forth in the preamble, the Department amends 14 CFR part 382 as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for 14 CFR part 382 continues to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

§ 382.7 [Amended]

2. Amend 14 CFR § 382.7(c) by removing the word ''or'' in the first sentence thereof and adding the word ''and'' in its place.

[FR Doc. 00–163 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF STATE

Broadcasting Board of Governers

22 CFR Parts 22 and 514

[Public Notice 3190]

Exchange Visitor Program: Redesignation of Regulations and Delay of Effective Date

AGENCY: Broadcasting Board of Governors and Bureau of Educational and Cultural Affairs, Department of State.

ACTION: Interim final rule.

SUMMARY: Pursuant to the consolidation of the United States Information Agency (''USIA'') and the Department of State as mandated by the Foreign Affairs Agencies Consolidation Act of 1998, public regulations of the former USIA were either repealed, revised and amended to apply only to the Department of State, or amended to apply only to the Broadcasting Board of Governors (''BBG''). Through administrative error, one provision of the former USIA regulations, 22 CFR 514.90(a) was inadvertently retained by the BBG instead of being removed, as intended. This rule cures this error by removing 22 CFR 514.90(a).

The Department of State is also delaying indefinitely the effective date of the interim final rule that was published in the **Federal Register** by the United States Information Agency on September 27, 1999, at 64 FR 51894–51896. The rule would institute user fees for the services of the Program

Designation Branch of the Exchange Visitor Program Services. Exchange Visitor Program Services has been part of the Department since October 1, 1999, pursuant to the consolidation of the United States Information Agency and the Department of State as mandated by the Foreign Affairs Consolidation Act of 1998.

DATES: This rule is effective December 30, 1999. As of December 30, 1999, the effective date for the regulations published September 27, 1999, at 64 FR 51894–51896, revising 22 CFR 514.90, is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Sally Lawrence, Branch Chief, Program Designation Branch, Exchange Visitor Program Services, Bureau of Educational and Cultural Affairs, United States Department of State 301 4th Street, SW, Room 734, Washington, DC 20547; telephone (202) 401–9810; facsimile (202) 401–9809.

SUPPLEMENTARY INFORMATION: This rule removes the text of a former regulation of the United States Information Agency, which appeared at 22 CFR 514.90(a), in order to correct a prior administrative error.

Further, on September 27, 1999, the United States Information Agency published in the **Federal Register**, at 64 FR 51894–51896, an interim rule concerning user fees. This rule, initially scheduled to become effective on January 1, 2000, established new fees at 22 CFR 514.90(b). Such fees would enable the State Department to recover the full cost associated with its administrative processing of requests by Program participants for an extension, change of category, or reinstatement of their program status. Also, it would recoup costs associated with processing requests for designation of exchange visitor programs as well as non-routine requests for the Form IAP–66 submitted by designated sponsors on an urgent or expedited basis.

The Department of State received five sets of Comments on the September 27, 1999 interim final rule on user fees. These comments were from non-government organizations involved in international exchanges. They expressed a desire that the fees be delayed for a number of reasons, including allowing time for the Department to further consult with the exchange community on the matter, and for integration of the Program Designation Branch within the Department as the result of the consolidation of United States Information Agency and the Department of State. Based on a review of the comments, the Department believes that the interim final rule, as published, is programmatically sound. The Department has, however, also determined that additional time is needed to institute an appropriate collection, recording and accounting system within the new State Department environment. The Department, therefore, has decided to postpone indefinitely the effective date of the user fees for Program Designation services until the administrative process for fees is established. This rule has no effect on the user fee that is currently being charged for applications for waiver of the two-year home-country residence requirement of section 212(e) of the Immigration and Nationality Act, as formerly set forth in 22 CFR 514.90(b), and as now set forth in 22 CFR 22.1 item 72. The Department of State will make the interim final rule effective at a later date by amending 22 CFR 22.1 to include the fees formerly listed in the interim final rule 22 CFR 514.90(b) published at 64 FR 51894–51896.

List of Subjects

22 CFR Part 22

Fees and funds, Foreign Service, Passports and visas.

22 CFR Part 514

Cultural Exchange Programs.

For the reasons set forth above, pursuant to the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, 112 Stat. 2681–761, Title 22 of the Code of Federal Regulations is amended as follows:

CHAPTER V—BROADCASTING BOARD OF GOVERNORS

PART 514—[REMOVED]

1. Part 514, consisting of § 514.90, is removed.

Dated: December 29, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

Dated: December 29, 1999.

Susan Andross,

Congressional and External Affairs Coordinator.

Dated: December 28, 1999.

Patrick F. Kennedy,

Assistant Secretary for Administration, Department of State.

[FR Doc. 99–34070 Filed 12–30–99; 11:30 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–206]

Drawbridge Operation Regulations: Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the NJTRO Newark-Harrison (Morristown Line) Bridge, mile 5.8, across the Passaic River between Newark and Harrison, New Jersey. This deviation from the regulations allows the bridge owner to keep the bridge in the closed position from 2 a.m. on January 7, 2000, to 2 a.m. on January 9, 2000. This action is necessary to facilitate mechanical repairs at the bridge.

DATES: This deviation is effective January 7, 2000, through January 9, 2000.

FOR FURTHER INFORMATION CONTACT: Judy Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The NJTRO Newark-Harrison (Morristown Line) Bridge, mile 5.8, across the Passaic River between Newark and Harrison, New Jersey, has a vertical clearance of 15 feet at mean high water, and 20 feet at mean low water in the closed position. The bridge owner, New Jersey Transit, requested a temporary deviation from the operating regulations to facilitate mechanical repairs at the bridge. The existing operating regulations listed at 33 CFR 117. 739(g) require the bridge to open on signal, if at least a one-hour advance notice is given to the drawtender at the Upper Hack Bridge. An additional half-hour delay in opening is permitted if the drawtender is not at the Upper Hack Bridge and at the Lower Hack Bridge. From 7:15 a.m. to 9 a.m. and from 4:30 p.m. to 6:50 p.m., Monday through Friday, except federal holidays, the draw need not open for vessel traffic.

This deviation to the operating regulations allows the owner of the NJTRO Newark-Harrison (Morristown Line) Bridge to keep the bridge in the closed position from 2 a.m. on January 7, 2000, through 2 a.m. on January 9, 2000. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due

speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 17, 1999.

R.M. Larrabee,

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

[FR Doc. 00–256 Filed 1–3–00; 1:12 pm]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50635; FRL–6055–2]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 40 chemical substances which were the subject of premanufacture notices (PMNs) and subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs to prevent any unreasonable risk of injury to human health or the environment. EPA is promulgating this SNUR using direct final procedures.

DATES: The effective date of this rule is March 6, 2000 without further notice, unless EPA receives adverse comment or notice of intent to submit adverse comment before February 4, 2000. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on January 19, 2000.

If EPA receives adverse comment or notice before February 4, 2000 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR before the effective date for the substance for which the comment or notice of intent to comment is received and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Comments or notice of intent to submit adverse or critical comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''**SUPPLEMENTARY INFORMATION**'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50635 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Joe Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–435, 401 M St., SW., Washington, DC 20460, telephone number: (202) 260–1857; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''**FOR FURTHER INFORMATION CONTACT**.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. You may also obtain copies of the notice of availability documents for the 835 (63 FR 4259, January 28, l998) (FRL–5761–7), 850 (62 FR 16486, April 15, l996) (FRL–5363–1), and 870 (63 FR 41845, August 5, l998) (FRL–5740–1) series OPPTS harmonized test guidelines at this same site. To access these documents, 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/. The OPPTS harmonized test guidelines referenced in this document are available on EPA's Internet Home Page at http://www.epa.gov/OPPTS_Harmonized/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50635. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Center is (202) 260–7099.

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 OPPTS–50635 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–50635. 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 technical person identified in the ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, 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:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the rule.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing, importing, or processing a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2) of TSCA. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5 (h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721, subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned for non-confidential chemical

identities), basis for the action taken by EPA in the TSCA section 5(e) consent order or as a non-section 5(e) SNUR for the substance (including the statutory citation and specific finding), toxicity concern, and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of this document by reference to 40 CFR part 721, subpart E where the significant new uses are described in detail. Certain new uses, including production limits and other uses designated in the rule are claimed as CBI. The procedure for obtaining confidential information is set out in Unit VII. of this preamble.

Where the underlying TSCA section 5(e) consent order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI. of this preamble, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice (SNUN) at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the TSCA section 5(e) consent order. Descriptions of recommended tests are provided for informational purposes.

Data on potential exposures or releases of the substances, testing other than that specified in the TSCA section 5(e) consent order for the substances, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs, as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

EPA is not publishing SNURs for PMNs P–97–991, P–97–342/343/344, P–97–727/728/730/731/732/904, P–98–123, P–98–325, P–98–359, P–98–700/701, and P–98–796, which are subject to a final TSCA section 5(e) consent order. The TSCA section 5(e) consent orders for these substances are derived from an exposure finding based solely on substantial production volume and significant or substantial human exposure and/or release to the environment of substantial quantities. For these cases there were limited or no toxicity data available for the PMN substances. In such cases, EPA regulates the new chemical substances under TSCA section 5(e) by requiring certain toxicity tests. For instance, chemical substances with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects. However, for these substances, the short-term toxicity testing required by the TSCA section 5(e) consent order is usually completed within 1 to 2 years of notice of commencement. EPA's experience with exposure-based SNURs requiring short-term testing is that the SNUR is often revoked within 1 to 2 years when the test results are received. Rather than issue and revoke SNURs in such a short span of time, EPA will defer publication of exposure-based SNURs until either a notice of commencement (NOC) or data demonstrating risk are received unless the toxicity testing required is long-term. EPA is issuing this explanation and notification as required in 40 CFR 721.160(a)(2) as it has determined that SNURs are not needed at this time for these substances which are subject to a final section 5(e) consent order under TSCA.

PMN Number P–90–1527

Chemical name: (generic) Halogenated benzyl ester acrylate.
CAS number: Not available.
Effective date of section 5(e) consent order: July 20, l998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: The PMN substance has been shown to cause kidney and blood effects in test animals. Also, similar chemicals have been shown to form dibenzodioxins and dibenzofurans when incinerated under combustion conditions of municipal incinerators.
Recommended testing: A 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline) is required to help characterize systemic effects observed in shorter term testing. An incineration simulation study is required to help characterize the potential for the formation of dibenzodioxins or dibenzofurans when plastics or resins containing the PMN substance are incinerated. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing the 90-day subchronic oral study. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing an incineration simulation test.
CFR citation: 40 CFR 721.329.

PMN Numbers P–94–697 through P–94–895

Chemical name: (generic) Fatty acids C_{12-18}, C_{18} unsaturated, C_{12-18} alkyl esters.
CAS number: Not available.
Effective date of section 5(e) consent order: October 6, 1994.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(II) of TSCA based on a finding that these substances are expected to be produced in substantial quantities, there may be significant or substantial human exposure to the substances, and the substances may enter the environment in substantial quantities.
Recommended testing: EPA has determined that a 28-day oral toxicity study in rats (Organization for Economic Cooperation and Development (OECD) guideline no. 407) that includes a neurotoxicity functional observational battery (National Technical Information Service (NTIS): PB 91–154617) for all test doses with the highest dose set at 1,000 milligram/kilogram (mg/kg), and for the highest test dose group only, histopathologic examination shall be extended to include testes/ovaries and lungs, and an oral developmental toxicity study in one species (40 CFR 798.4900 or OPPTS 870.3700 test guideline) would help to characterize the health effects of the substances. EPA has determined that a ''modified Semicontinuous Activated Sludge (SCAS) test'' (OPPTS 835.3210 test guideline) and a ready biodegradation study (OPPTS 835.3110 test guideline) would help to characterize the environmental effects of the substances. The PMN submitter has agreed not to exceed the production volume limit without performing the toxicity studies using P–94–697 and the biodegradation studies using P–94–697.
CFR citation: 40 CFR 721.3025.

PMN Number P–95–169

Chemical name: Morpholine, 4-(1-oxo-2-propenyl)-.
CAS number: 5117–12–4.

Effective date of section 5(e) consent order: November 27, 1998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(l)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Structurally similar chemicals have been shown to cause heritable mutagenicity, carcinogenicity, neurotoxicity, reproductive toxicity, developmental toxicity, and systemic toxicity in test animals and chronic aquatic toxicity in aquatic organisms.
Recommended testing: The consent order contains four production volume limits. The PMN submitter has agreed not to exceed the first production volume limit without performing an OECD guideline no. 422 study extended to 90 days with observations for motor activity and neuropathology (NTIS: PB91–154617) within 1 year from the commencement of commercial manufacture or import to address the systemic, developmental, and neurotoxic effects. The PMN submitter has also agreed not to exceed the second higher production volume limit without performing a rodent dominant lethal assay (40 CFR 798.5450 or OPPTS 870.5450 test guideline) 14 weeks before manufacturing or importing 1,300,000 kilograms of the PMN substance. If the rodent dominant lethal assay is positive, the PMN submitter has also agreed not to exceed the third higher production volume limit without performing a rodent heritable translocation test (40 CFR 798.5460 or OPPTS 870.5460 test guideline) which would be the appropriate follow-up test and it must be submitted to EPA 14 weeks before manufacturing or importing 1,600,000 kilograms of the PMN substance or 1 year after the submission of the rodent dominant lethal assay to EPA, whichever comes later to help characterize the heritable mutagenic effects. The PMN submitter has also agreed not to exceed the fourth higher production volume limit without performing a 2-year, two-species oral carcinogenicity test (40 CFR 798.3300 or OPPTS 870.4200 test guideline) in rats and mice 14 weeks before manufacturing or importing an additional 4,000,000 kilograms of the PMN substance (a total of 5,500,000 kilograms) or 5 years after the commencement of commercial manufacture, whichever comes later to help characterize the carcinogenic effects.

The following additional information would be required to evaluate the environmental effects which may be caused by the PMN substance: daphnid chronic toxicity study (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft)), a fish early life stage toxicity (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft)), and a semi-continuous activated sludge study (OPPTS 835.3210 test guideline). The order does not require submission of the above information at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMN substance will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.
CFR citation: 40 CFR 721.5185.

PMN Numbers P–95–1400 and P–95–1410

Chemical names: (generic) (P–95–1400) Perfluorinatedalkyl polyhydroxysilane; and (P–95–1410) Perfluorinatedalkyl polyalkoxysilane.
CAS number: Not available.
Effective date of section 5(e) consent order: May 15, l998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(l)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Based on submitted acute inhalation toxicity data with 10 percent formulations of PMN P–95–1400 containing hexadecyltrimethyl ammonium chloride, and sodium dodecylbenzene sulfonate as emulsifiers, P–95–1400 has been shown to cause death in test animals at concentrations as low as 61 milligrams per cubic meter.
Recommended testing: EPA has determined that a 90-day subchronic inhalation study in rats (40 CFR 799.9346 or OPPTS 870.3465 test guideline) would help to characterize a lethality risk to consumers exposed via inhalation during use of these PMN substances.
CFR citations: 40 CFR 721.9508 (P–95–1400); 40 CFR 721.9509 (P–95–1410).

PMN Number P–97–482

Chemical name: Fatty acids, C_{10-13} - branched, vinyl esters.
CAS number: 184785–38–4.
Effective date of section 5(e) consent order: July 31, 1998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Structurally similar chemicals have been shown to cause developmental and reproductive toxicity, neurotoxicity and cancer in test animals, and chronic toxicity to aquatic organisms.
Recommended testing: A metabolic hydrolysis test on both the PMN substance and the structural analogue vinyl acetate, as well as a 90-day oral subchronic neurotoxicity testing in rats (OPPTS 870.3150 test guideline), with certain adjuncts to address reproductive toxicity concerns, will help the Agency to characterize the human health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing these studies. The PMN submitter has submitted testing on the PMN substance to characterize environmental toxicity concerns.
CFR citation: 40 CFR 721.9965.

PMN Number P–97–635

Chemical name: Boric acid (H3BO3), mixed esters with polyethylene glycol mono-Bu ether and polyethylene glycol mono Me ether.
CAS number: 183290–62–2.
Basis for action: This PMN substance will be used as a component of a brake fluid formulation. EPA has identified health concerns for reproductive and blood toxicity based on data on structurally similar borons. Since significant worker exposure is unlikely when workers wear impervious gloves, as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present an unreasonable risk. EPA has determined, however, that manufacture, process, or use of the substance without dermal protection may result in serious chronic and developmental effects. Also, based on analogy to boron, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 parts per billion (ppb) of the PMN substance in surface waters. Since environmental releases are not expected to exceed 300 ppb as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water above 300 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that the OECD reproductive toxicity screen in rats (OECD guideline

no. 421) with special attention to hematology would help to characterize the human health effects. If this screen is positive for reproductive toxicity, a reproductive fertility study in rats (40 CFR 799.9380) is recommended. In addition, the following acute aquatic toxicity tests: algal (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)); daphnid (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public)); and fish (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.1729.

PMN Number P–97–636

Chemical name: Poly(oxy-1,2-ethanediyl), α-butyl-ω- hydroxy, ester with boric acid (H3BO3).
CAS number: 106008–93–9.
Basis for action: This PMN substance will be used as a component of a brake fluid formulation. EPA has identified health concerns for reproductive and blood toxicity based on data on structurally similar borons. Since significant worker exposure is unlikely when workers wear impervious gloves, as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present an unreasonable risk. EPA has determined, however, that manufacture, process, or use of the substance without dermal protection may result in serious chronic and developmental effects. Also, based on analogy to boron, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 ppb of the PMN substance in surface waters. Since environmental releases are not expected to exceed 300 ppb as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water above 300 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that the OECD reproductive toxicity screen in rats (OECD guideline no. 421) with special attention to hematology would help to characterize the human health effects. If this screen is positive for reproductive toxicity, a reproductive fertility study in rats (40 CFR 799.9380) is recommended. In addition, the following acute aquatic toxicity tests would help to characterize the environmental effects: algal (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)); daphnid (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)); and fish (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)).
CFR citation: 40 CFR 721.1730.

PMN Number P–97–637

Chemical name: Poly(oxy-1,2-ethanediyl), α-methyl-ω- hydroxy, ester with boric acid (H3BO3).
CAS number: 106008–94–0.
Basis for action: This PMN substance will be used as a component of a brake fluid formulation. EPA has identified health concerns for reproductive and blood toxicity based on data on structurally similar borons. Since significant worker exposure is unlikely when workers wear impervious gloves, as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present an unreasonable risk. EPA has determined, however, that manufacture, process, or use of the substance without dermal protection may result in serious chronic and developmental effects. Also, based on analogy to boron, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 300 ppb of the PMN substance in surface waters. Since environmental releases are not expected to exceed 300 ppb as described in the PMN, EPA has not determined that the proposed processing and use of the substance may present an unreasonable risk. EPA has determined, however, that any release of the PMN substance to surface water above 300 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that the OECD reproductive toxicity screen in rats (OECD guideline no. 421) with special attention to hematology would help to characterize the human health effects. If this screen is positive for reproductive toxicity, a reproductive fertility study in rats (40 CFR 799.9380) is recommended. In addition, the following acute aquatic toxicity tests would help to characterize the environmental effects: algal (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)); daphnid (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)); and fish (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)).
CFR citation: 40 CFR 721.1731.

PMN Number P–97–648

Chemical name: Benzeneamine, 3,5-Difluoro-.
CAS number: 372–39–4.
Effective date of section 5(e) consent order: May 15, l998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment, and that there may be significant or substantial human exposure to the PMN substance.
Toxicity concern: Based on test data submitted with the PMN and data on structurally analogous chemicals (primarily aniline), the substance may cause neurotoxicity, mutagenicity, carcinogenicity, maternal and developmental toxicity, and blood effects to workers via both inhalation and dermal exposure. The substance has been shown to be acutely toxic and neurotoxic in test animals.
Recommended testing: EPA has determined that a combined repeated dose 90-day study via oral route in rats with histopathology (OECD Testing Protocol guideline no. 422), an *in vitro* mouse lymphoma test (40 CFR 799.9530), and an *in vivo* micronucleus test (40 CFR 799.9539) would help to characterize the human health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit in the consent order without performing these tests. A 2-year oral carcinogenicity study in rats (40 CFR 799.9420) would also help to characterize the human health effects of the PMN substance. In addition, the following acute aquatic toxicity tests would help to characterize the environmental effects: algal (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)); fish (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)); and daphnid (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)).
CFR citation: 40 CFR 721.1055.

PMN Number P–97–649

Chemical name: Hydrazinecarboxamide, *N*-(3,5-difluorophenyl-).
CAS number: 167412–23–9.
Effective date of section 5(e) consent order: May 15, l998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A) (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Based on test data submitted with the PMN and data on structurally analogous chemicals (primarily aniline), the substance may cause neurotoxicity, mutagenicity, carcinogenicity, maternal and

developmental toxicity, and blood effects to workers via inhalation exposure and via dermal exposure when in a solvent.
Recommended testing: EPA has determined that a combined repeated dose 90-day study via oral route in rats with histopathology (OECD Testing Protocol guideline no. 422) and an *in vivo* micronucleus test (40 CFR 799.9539) would help to characterize the human health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit in the consent order without performing these tests.
CFR citation: 40 CFR 721.4265.

PMN Number P–97–661

Chemical name: (generic) Alkyl substituted aromatic glycidyl ether.
CAS number: Not available.
Effective date of section 5(e) consent order: August 10, 1998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Based on data on structurally analogous epoxide chemicals, the substance may cause skin irritation, developmental toxicity, male reproductive toxicity, mutagenicity, carcinogenicity, liver and kidney toxicity and environmental toxicity.
Recommended testing: EPA has determined that a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline) is required to help characterize the human health effects of the substance. The PMN submitter has agreed not to exceed the production volume limit in the consent order without performing this test. A 2-year, two-species oral carcinogencity study (40 CFR 799.4200 or OPPTS 870.4200 test guideline) is also recommended to help characterize the human health effects of the PMN substance. In addition, the following aquatic toxicity test would help to characterize the environmental effects: acute algal (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)); chronic fish (40 CFR 797.1600 or OPPTS 850.1400 test guideline (public draft)); and chronic daphnid (40 CFR 797.1330 or OPPTS 850.1300 test guideline (public draft)) would help to characterize the environmental effects of the substance.
CFR citation: 40 CFR 721.3845.

PMN Number P–98–105

Chemical name: (generic) Cycloaliphatic epoxy resin.
CAS number: Not available.
Effective date of section 5(e) consent order: August 7, l998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(l)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health.
Toxicity concern: Structurally similar epoxides have been shown to cause mutagenicity, carcinogenicity, male reproductive toxicity, lung toxicity, and skin and lung sensitization in test animals.
Recommended testing: EPA has determined that a 90-day subchronic oral toxicity test in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline) and a chronic/carcinogenicity oral study in rats (40 CFR 798.3320) would help to characterize the health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit without performing the 90-day test.
CFR citation: 40 CFR 721.2755

PMN Number P–98–150

Chemical name: Poly[oxy(methyl-1,2-ethanediyl)],α-(1-oxo-2-propenyl)-ω-[(tetrahydro-2furanyl)methoxy]-.
CAS number: 149303–87–7.
Effective date of section 5(e) consent order: July 13, 1998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment.
Toxicity concern: Based on structural analogy to acrylates/methacrylates, EPA expects toxicity to aquatic organisms to occur at a concentration as low as 1 ppb when the average number of moles of the propoxy group is 12-14, as low as 20 ppb when the average number of moles of the propoxy group is 5, and as low as 40 ppb when the average number of moles of the propoxy group is equal to 2.
Recommended testing: EPA has determined that the results of the following acute aquatic toxicity tests: algal (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)); daphnid (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)); and fish (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)) would help to characterize possible environmental effects of the substance when the average number of moles of the propoxy group is between 5 and 14.
CFR citation: 40 CFR 721.3310.

PMN Numbers P–98–315/316/317/318

Chemical names: (P–98–315) Bicyclo[2.2.1]hept-2-ene, 5-butyl-; (P–98–316) Bicyclo[2.2.1]hept-2-ene, 5-hexyl-; (P–98–317) Bicyclo[2.2.1]hept-2-ene, 5-octyl-; (P–98–318) Bicyclo[2.2.1]hept-2-ene, 5-decyl-.
CAS numbers: 22094–81–1, 22094–83–3, 22094–84–4, and 22094–85–5.
Basis for action: The PMN substances will be used as monomers for specialty polymers. Based on structural analogy to neutral organics, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb. Since significant environmental exposure is unlikely as the substances are not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances.
CFR citations: 40 CFR 721.4105 (P–98–315); 40 CFR 721.4106 (P–98–316); 40 CFR 721.4107 (P–98–317); 40 CFR 721.4108 (P–98–318).

PMN Number P–98–400

Chemical name: Amines, C_{12-14}-tert-alkyl, sulfonates.
CAS number: 197527–19–8.
Basis for action: The PMN substance will be used as an extreme pressure lubricant additive in metalworking fluids. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets

the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.644.

PMN Number P–98–475

Chemical name: Benzenesulfonic acid, 2,2′-[(1E)-1,2- ethenediyl] bis[5-[[4-(methylamino)-6-[[4-[(methylamino)carbonyl]phenyl]amino]-1,3,5-triazin-2-yl]amino]-,disodium salt.
CAS number: 180850–95–7.
Effective date of section 5(e) consent order: June 27, 1998.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and section 5(e)(1)(A)(ii)(I), and section 5(e)(1)(A)(ii) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health, that the PMN substance will be produced in substantial quantities, and there may be significant or substantial human exposure to the substance.
Toxicity concern: Test data on structurally similar chemicals have been shown to cause reproductive and developmental effects in test animals.
Recommended testing: EPA has determined that an oral developmental toxicity test in rabbits (40 CFR 799.9370) would help to characterize the human health effects. The PMN submitter has agreed not to exceed the production volume limit without performing this test.
CFR citation: 40 CFR 721.9785.

PMN Number P–98–604

Chemical name: (generic) Modified magnesium silicate polymer.
CAS number: Not available.
Basis for action: This PMN substance will be used as an additive in a polymer. EPA has identified health concerns for lung toxicity/fibrosis and cancer based on data on structurally similar compounds. Since significant inhalation exposure is unlikely because there is no inhalation exposures for the uses described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance in a powdered form may cause serious chronic effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C) and (b)(3)(ii).
Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity test (40 CFR 798.2450) and a 2-year, two-species inhalation carcinogenicity study (40 CFR 799.9420) would help to characterize the human health effects.
CFR citation: 40 CFR 721.9513.

PMN Number P–98–645

Chemical name: (generic) Substituted perfluoroalkyl sulfonamide.
CAS number: Not available.
Basis for action: The PMN substance will be used as a polymer additive. Based on structural analogy to nonionic surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9573.

PMN Number P–98–679

Chemical name: (generic) Alkylbenzenesulfonic acid.
CAS number: Not available.
Basis for action: The PMN substance will be used as an extreme pressure lubricant additive in metalworking fluids. Based on structural analogy to aliphatic amines, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 2 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1655.

PMN Number P–98–716

Chemical name: Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2hydroxypropyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-, disodium salt, compd. with 2,2′,2″-nitrilotris[ethanol] (1:2); Benzenesulfonic acid, 5-[[4-[bis(2-hydroxyethyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-[2-[4-[[4-[bis(2-hydroxypropyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]ethenyl]-disodium salt-, compd.with 2,2′,2″-nitrilotris[ethanol] (1:2).
CAS numbers: 198716–46–0 and 198716–48–2.
Basis for action: The PMN substance will be used as a textile whitening agent. Based on toxicity data for structurally similar substances, EPA has identified health concerns for developmental toxicity. Since significant worker exposure is unlikely because it would not be manufactured, processed, or used as a powder or solid, EPA has not determined that manufacturing, processing, or use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that manufacturing, processing, or use of the substance as a solid or powder may cause serious developmentally toxic effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) .
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9790.

PMN Number P–98–718

Chemical name: (generic) Mixed alkyl phenolic novolak resin.
CAS number: Not available.
Basis for action: The PMN substance will be used as a raw material in the manufacture of photoresist. Based on structural analogy to polyphenols, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5380.

PMN Number P–98–725

Chemical name: Amides, tall-oil fatty, *N*-[2-[2-hydroxyethyl)amino]ethyl], reaction products with sulfur dioxide; Fatty acids, tall-oil, reaction products with 1-piperazineethanamine and sulfur dioxide; and Fatty acids, tall-oil reaction products with sulfur dioxide and triethylenetetramine.
CAS numbers: 202483–48–5, 203809–20–5, and 204401–83–2.
Basis for action: The PMN substance will be used as a corrosion inhibitor for oil and gas production and pipelines. Based on structural analogy to amphoteric surfactants, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 4 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.9672.

PMN Number P–98–774

Chemical name: (generic) Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[(4,6-dichloro-1,3,5-triazin-2-yl)amino]-, disodium salt; substituted with dialkyl amines.
CAS number: Not available.
Basis for action: The PMN substance will be used as a chemical intermediate. Based on toxicity data on structurally similar substances, EPA has identified health concerns for developmental toxicity. Since significant worker exposure is unlikely because it would not be manufactured, processed, or used as a powder, EPA has not determined that manufacturing, processing, or use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that manufacturing, processing, or use of the substance as a powder may cause serious developmentally toxic effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.9795.

PMN Number P–98–807

Chemical name: (generic) Alkoxylated acrylate polymer.
CAS number: Not available.
Basis for action: The PMN substance will be used as a formulation component for Ultra Violet (UV) curable photo polymer, a formulation component for UV curable coatings and a chemical intermediate. Based on an analogy to acrylates, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 10 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters resulting in concentrations greater than 10 ppb, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters greater than 10 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.324.

PMN Numbers P–98–843 and P–86–65

Chemical name: (generic) Phenyl, alkyl, hydroxyalkyl substituted imidazole.
CAS number: Not available.
Basis for action: The PMN substance will be used as a curing agent in the manufacture of liquid epoxy adhesive. EPA has a concern for neurotoxicity based on structural analogy to methylimidiazoles and a concern for irritation to mucous membranes and eyes based on structural analogy to imidazole. Since significant worker exposure is unlikely when workers wear respiratory equipment, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without respiratory protection could result in exposures that may cause serious chronic effects. Additionally, based on analogy to aliphatic amines, EPA is also concerned that toxicity to aquatic organisms may occur at a concentration as low as 9 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this

information the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(4)(ii).
Recommended testing: EPA has determined that an acute oral study in rats (OPPTS 870.1100 test guideline) and a 90-day subchronic oral study in rats (40 CFR 798.2650 or OPPTS 870.3100 test guideline) would help to characterize the health effects of the PMN substance. The PMN submitter has agreed not to exceed the production volume limit in the consent order without conducting these tests. EPA has also determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.4472.

PMN Number P–98–1036

Chemical name: Hydrofluoric acid, reaction products with heptane.
CAS number: 207409–71–0.
Basis for action: The PMN substance will be used as a chemical intermediate. Based on toxicity data on structurally similar substances, EPA has identified health concerns for developmental toxicity, cardiosensitization, reproductive toxicity in males, neurotoxicity, and liver toxicity. Since significant worker exposure is unlikely when the substance is used as an intermediate, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as an intermediate could result in exposures which may cause serious chronic effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.4385.

PMN Number P–98–1043

Chemical name: (generic) Substituted amino alkyl triazinyl benzenesulfonic acid derivative.
CAS number: Not available.
Basis for action: This PMN substance will be used as an additive in a polymer. EPA has identified health concerns for lung toxicity/fibrosis and cancer based on data on structurally similar compounds. Since significant worker exposure is unlikely when the substance is processed and used as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manfacture of the substance could result in exposures which may cause serious chronic effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C).
Recommended testing: EPA has determined that a 90-day subchronic inhalation toxicity test (40 CFR 798.2450 or OPPTS 870.3465 test guideline) and a 2-year, two-species inhalation carcinogenicity study (40 CFR 798.3300 or OPPTS 870.4200 test guideline) would help to characterize the human health effects.
CFR citation: 40 CFR 721.9810.

PMN Numbers P–98–1046/1047

Chemical name: (generic) Fluoroalkyl diester.
CAS number: Not available.
Basis for action: These PMN substances will be used as site limited intermediates in the production of a fluorinated compound. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 200 ppb of the PMN substances in surface waters. Since significant environmental exposure is unlikely as the substances are not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substances may present an unreasonable risk. EPA has determined, however, that other uses of the substances resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substances meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substances.
CFR citation: 40 CFR 721.2385.

PMN Number P–98–1048

Chemical name: 3-furancarboxaldehyde, tetrahydro-.
CAS number: 79710–86–4.
Basis for action: The PMN substance will be used as a chemical intermediate. Based on toxicity data on structurally similar substances, EPA has identified health concerns for immunotoxicity, carcinogenicity, neurotoxicity, male reproductive toxicity, and corrosion to eyes, lung, and mucous membranes. Since significant worker exposure is unlikely when the substance is manufactured, processed, and used as an intermediate as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as intermediate could result in exposures which may cause serious chronic effects. Based on this information the PMN substance meets the concern criteria at § 721.170 (b)(3)(ii) and (b)(1)(i)(C).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two-species (40 CFR 798.4900 or OPPTS 870.3700 test guideline) would help to characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.2087.

PMN Number P–98–1162

Chemical name: 1,3-Benzenedicarboxylic acid, bis[[4-[(ethenyloxy)methyl] cyclohexyl] methyl] ester.
CAS number: 119581–93–0.
Basis for action: The PMN substance will be used as a radiation curable coating, ink, and adhesives. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a

daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1576.

PMN Number P–98–1163

Chemical name: 1,4-Benzenedicarboxylic acid, bis[4-(ethenyloxy) butyl] ester.
CAS number: 117397–31–6.
Basis for action: The PMN substance will be used as a radiation curable coating, ink, and adhesives. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 30 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1577.

PMN Number P–98–1164

Chemical name: 1,4-Benzenedicarboxylic acid, bis[[4-[(ethenyloxy)methyl] cyclohexyl] methyl] ester.
CAS number: 209072–72–0.
Basis for action: The PMN substance will be used as a radiation curable coating, ink, and adhesives. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 1 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1578.

PMN Number P–98–1165

Chemical name: 1,2,4-Benzenetricarboxylic acid, tris [4-(ethenyloxy) butyl] ester.
CAS number: 196109–17–8.
Basis for action: The PMN substance will be used as a radiation curable coating, ink, and adhesives. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 50 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.1579.

PMN Number P–98–1172

Chemical name: (generic) Amine salt of organic acid.
CAS number: Not available.
Basis for action: This PMN substance will be used as a stabilizer for polymerization. Based on structural analogy to esters, EPA is concerned that toxicity to aquatic organisms may occur at a concentration as low as 20 ppb of the PMN substance in surface waters. Since significant environmental exposure is unlikely as the substance is not released to surface waters, as described in the PMN, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that other uses of the substance resulting in releases to surface waters may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that a fish acute toxicity study (40 CFR 797.1400 or OPPTS 850.1075 test guideline (public draft)), a daphnid acute toxicity study (40 CFR 797.1300 or OPPTS 850.1010 test guideline (public draft)), and an algal acute toxicity study (40 CFR 797.1050 or OPPTS 850.5400 test guideline (public draft)) would help to characterize the environmental effects of the PMN substance.
CFR citation: 40 CFR 721.5465.

PMN Number P–98–1222

Chemical name: (generic) Benzenesulfonic acid, 2,2′-(1,2-ethanediyl)bis[5-[[4-substituted-6-substituted-1,3,5-triazin-2-yl]amino]-, sodium salt.
CAS number: Not available.
Basis for action: The PMN substance will be used as a fluorescent brightener in cellulosic paper applications. Based on submitted test data and analogy to structurally similar substances, EPA has identified health concerns for kidney effects and developmental toxicity. Since significant worker exposure is unlikely as the substance is not manufactured, processed, or used as a powder or a solid, as described in the PMN, EPA has not determined that the proposed manufacture, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance as a powder or solid could result in inhalation exposures that may cause serious chronic and developmentally toxic effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that a prenatal developmental toxicity study by the oral route in two-species (40 CFR 799.9370)

would help to characterize the human health effects of the PMN substance. *CFR citation:* 40 CFR 721.9798.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for 11 of the 40 substances, regulation was warranted under section 5(e) of TSCA, pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the substances. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters; the SNUR provisions for these substances designated herein are consistent with the provisions of the TSCA section 5(e) consent orders.

In the other 29 cases for which the proposed uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.
2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.
3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.
4. All manufacturers, importers, and processors of the same chemical substance which is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), this rule will be effective March 6, 2000, unless EPA receives a written notice before February 4, 2000 that someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a document to withdraw the direct final SNUR for the specific substance to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance providing a 30-day comment period.

This action establishes SNURs for a number of chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a TSCA section 5(e) consent order requires or recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the TSCA section 5(e) consent orders for several of the substances regulated under this rule, in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit III. of this preamble. The SNURs contain the same production volume limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the substances.
3. Information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2. EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that

identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus, the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.1725(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 12 substances and notice submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received an NOC and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 18 of the 41 substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the official record for this rule (OPPTS–50635).

X. Regulatory Assessment Requirements

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that SNURs are not a ''significant regulatory action'' subject to review by OMB, because SNURs do not meet the criteria in section 3(f) of the Executive Order.

Based on EPA's experience with past SNURs, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Similarly, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that the promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities. The Agency's generic certification for the

promulgation of new SNURs appears on June 2, l997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rule and in addition to its display on any related collection instrument, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OP Regulatory Information Division, Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

XI. Submission to Congress and the Comptroller General

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).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 20, 1999.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.324 to subpart E to read as follows:

§ 721.324 Alkoxylated acrylate polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkoxylated acrylate polymer (PMN P–98–807) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.329 to subpart E to read as follows:

§ 721.329 Halogenated benzyl ester acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated benzyl ester acrylate (PMN P–90–1527) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iv), (a)(5)(v), (a)(6)(i), (b), and (c) (concentration set at 1.0 percent). The reporting requirement for § 721.63(a)(5)(i) applies only during manufacture. The reporting requirement for § 721.63 (a)(5)(ii), (a)(5)(iv), and (a)(5)(v) applies only during processing.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g), (g)(1)(iv), (g)(2)(ii), (g)(2)(iv), and (g)(5). The following statement shall appear on each label as specified in § 721.72(b) and the Material Safety Data Sheet (MSDS) as specified in § 721.72 (c): The substance may cause internal organ effects (kidney and blood). The requirements of this section do not apply when the PMN substance is bound or embedded into a plastic, resin matrix, or pellet.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125 (a), (b), (c), (d), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

4. By adding new § 721.644 to subpart E to read as follows:

§ 721.644 Amines, C_{12-14}-tert-alkyl, sulfonates.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as amines, C_{12-14}-tert-alkyl, sulfonates (PMN P–98–400; CAS No. 197527–19–8) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

5. By adding new § 721.1055 to subpart E to read as follows:

§ 721.1055 Benzeneamine, 3,5-difluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzeneamine, 3,5-difluoro- (PMN P–97–648; CAS No. 372–39–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) provisions listed in the TSCA section 5(e) consent order for this substance. This NCEL is set at 0.4 mg/m^3.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i) and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

6. By adding new § 721.1576 to subpart E to read as follows:

§ 721.1576 1,3-Benzenedicarboxylic acid, bis[[4-[(ethenyloxy)methyl] cyclohexyl] methyl] ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-benzenedicarboxylic acid, bis[[4-[(ethenyloxy)methyl] cyclohexyl] methyl] ester (PMN P–98–1162; CAS No. 119581–93–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

7. By adding new § 721.1577 to subpart E to read as follows:

§ 721.1577 1,4-Benzenedicarboxylic acid, bis [4-(ethenyloxy) butyl] ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,4-benzenedicarboxylic acid, bis[4-(ethenyloxy) butyl] ester (PMN P–98–1163; CAS No. 117397–31–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

8. By adding new § 721.1578 to subpart E to read as follows:

§ 721.1578 1,4-Benzenedicarboxylic acid, bis[[4-[(ethenyloxy)methyl] cyclohexyl] methyl] ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,4-benzenedicarboxylic acid, bis[[4-[(ethenyloxy)methyl] cyclohexyl] methyl] ester (PMN P–98–1164; CAS No. 209072–72–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

9. By adding new § 721.1579 to subpart E to read as follows:

§ 721.1579 1,2,4-Benzenetricarboxylic acid, tris [4-(ethenyloxy) butyl] ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,2,4-benzenetricarboxylic acid, tris [4-(ethenyloxy) butyl] ester (PMN P–98–1165; CAS No. 196109–17–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

10. By adding new § 721.1655 to subpart E to read as follows:

§ 721.1655 Alkylbenzenesulfonic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylbenzenesulfonic acid (PMN P–98–679) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

11. By adding new § 721.1729 to subpart E to read as follows:

§ 721.1729 Boric acid (H3BO3), mixed esters with polyethylene glycol mono-Bu ether and polyethylene glycol mono Me ether.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as boric acid (H3BO3), mixed esters with polyethylene glycol mono-Bu ether and polyethylene glycol mono Me ether (PMN P–97–635; CAS No. 183290–62–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=300).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

12. By adding new § 721.1730 to subpart E to read as follows:

§ 721.1730 Poly(oxy-1,2-ethanediyl), α-butyl-ω-hydroxy, ester with boric acid (H3BO3).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), α-butyl-ω-hydroxy, ester with boric acid (H3BO3) (PMN P–97–636; CAS No. 106008–93–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=300).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

13. By adding new § 721.1731 to subpart E to read as follows:

§ 721.1731 Poly(oxy-1,2-ethanediyl), α-methyl-ω-hydroxy, ester with boric acid (H3BO3).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), α-methyl-ω-hydroxy, ester with boric acid (H3BO3) (PMN P–97–637; CAS No. 106008–94–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(2)(i) and (a)(3).

(ii) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=300).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

14. By adding new § 721.2087 to subpart E to read as follows:

§ 721.2087 3-furancarboxaldehyde, tetrahydro-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as a 3-furancarboxaldehyde, tetrahydro- (PMN P–98–1048; CAS No. 79710–86–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

15. By adding new § 721.2385 to subpart E to read as follows:

§ 721.2385 Fluoroalkyl diester (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as fluoroalkyl diester (PMNs P–98–1046 and P–98–1047) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

16. By adding new § 721.2755 to subpart E to read as follows:

§ 721.2755 Cycloaliphatic epoxy resin (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as cycloaliphatic epoxy resin (PMN P–98–105) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(viii), (a)(5)(ix), (a)(5)(x), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 0.3 mg/m^3.

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii),

(g)(2)(i), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

17. By adding new § 721.3025 to subpart E to read as follows:

§ 721.3025 Fatty acids C_{12-18}, C_{18} unsaturated, C_{12-18} alkyl esters (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as fatty acids C_{12-18}, C_{18} unsaturated, C_{12-18} alkyl esters (PMNs P–94–697 through P–94–895) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(p) (750,000 kilograms).

(ii) *Hazard communication program*. A significant new use of these substances is any manner or method of manufacture, import, or processing associated with any use of these substances without providing risk notification as follows:

(A) If as a result of the test data required under the TSCA section 5(e) consent order for these substances, the employer becomes aware that these substances may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into an MSDS as described in § 721.72(c) within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substances are reintroduced into the workplace.

(B) The employer must ensure that persons who will receive or who have received the substances from the employer within 5 years from the date the employer becomes aware of the new information described in paragraph (a)(2)(i)(A), are provided an MSDS as described in § 721.72(c) containing the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

18. By adding new § 721.3310 to subpart E to read as follows:

§ 721.3310 Poly[oxy(methyl-1,2-ethanediyl)],α-(1-oxo-2-propenyl)-ω-[(tetrahydro-2-furanyl)methoxy]-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as poly[oxy(methyl-1,2-ethanediyl)],α-(1-oxo-2-propenyl)-ω-[(tetrahydro-2-furanyl)methoxy]- (PMN P–98–150; CAS No.149303–87–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80. Manufacture of the PMN substance with an average number of moles of propoxy group between 5 and 14.

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a) and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

19. By adding new § 721.3845 to subpart E to read as follows:

§ 721.3845 Alkyl substituted aromatic glycidyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as alkyl substituted aromatic glycidyl ether (PMN P–97–661) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1) and (a)(3).

(ii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), (g)(2)(v), (g) (4) (iii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(q).

(iv) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c),(d),(e), (f), (g), (h),(i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

20. By adding new § 721.4105 to subpart E to read as follows:

§ 721.4105 Bicyclo[2.2.1]hept-2-ene, 5-butyl-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as Bicyclo[2.2.1]hept-2-ene, 5-butyl- (PMN P–98–315; CAS No. 22094–81–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

21. By adding new § 721.4106 to subpart E to read as follows:

§ 721.4106 Bicyclo[2.2.1]hept-2-ene, 5-hexyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as Bicyclo[2.2.1]hept-2-ene, 5-hexyl- (PMN P–98–316; CAS No. 22094–83–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

22. By adding new § 721.4107 to subpart E to read as follows:

§ 721.4107 Bicyclo[2.2.1]hept-2-ene, 5-octyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as Bicyclo[2.2.1]hept-2-ene, 5-octyl- (PMN P–98–317; CAS No. 22094–84–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

23. By adding new § 721.4108 to subpart E to read as follows:

§ 721.4108 Bicyclo[2.2.1]hept-2-ene, 5-decyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified Bicyclo[2.2.1]hept-2-ene, 5-decyl- (PMN P–98–318; CAS No. 22094–85–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

24. By adding new § 721.4265 to subpart E to read as follows:

§ 721.4265 Hydrazinecarboxamide, N-(3,5-difluorophenyl-).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as hydrazinecarboxamide, *N*-(3,5-difluorophenyl-) (PMN P–97–649; CAS No. 167412–23–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1) (applies only when the substance is in a solution), (a)(4), (a)(5)(i), (a)(6)(i), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is set at 0.4 mg/m^3.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(iv), (g)(1)(v), (g)(1)(vii), (g)(1)(ix), (g)(2)(i) (applies only when the substance is in a solvent), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v) (applies only when the substance is in a solvent), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

25. By adding new § 721.4385 to subpart E to read as follows:

§ 721.4385 Hydrofluoric acid, reaction products with heptane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as a hydrofluoric acid, reaction products with heptane (PMN P–98–1036; CAS No. 207409–71–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

26. By adding new § 721.4472 to subpart E to read as follows:

§ 721.4472 Phenyl, alkyl, hydroxyalkyl substituted imidazole (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenyl, alkyl, hydroxyalkyl substituted imidazole (PMNs P–98–843 and P–86–65) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), and (g)(1)(iii).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(r) (56,000 kg) (acute oral study (OPPTS 870.1100 test

guideline) followed by a (90-day subchronic inhalation study in rats (40 CFR 799.9346). A person may not manufacture or import the substance beyond the aggregate production volume limit, unless that person conducts this study on the substance and submits all final reports and underlying data in accordance with the procedures and criteria specified in paragraphs (a)(2)(iii)(A), (a)(2)(iii)(B), (a)(2)(iii)(C), and (a)(2)(iii)(D) of this section.

(A) Each study required to be performed pursuant to this section must be scientifically valid. *Scientifically valid* means that the study was conducted according to:

(*1*) The test guidelines specified in paragraph (a)(2)(iii) of this section.

(*2*) An EPA-approved protocol.

(*3*) TSCA Good Laboratory Practice Standards at 40 CFR part 792.

(*4*) Using methodologies generally accepted at the time the study is initiated.

(*5*) Any deviation from these requirements must be approved in writing by EPA.

(B) Before starting to conduct any of the studies in paragraph (a)(2)(iii) of this section, the person must obtain approval of test protocols from EPA by submitting written protocols. EPA will respond to the person within 4 weeks of receiving the written protocols. Published test guidelines specified in paragraph (a)(2)(iii) of this section (e.g., 40 CFR part 797 or part 798) provide general guidance for development of test protocols, but are not themselves acceptable protocols.

(C) The person shall:

(*1*) Conduct each study in good faith with due care.

(*2*) Promptly furnish to EPA the results of any interim phase of each study.

(*3*) Submit, in triplicate (with an additional sanitized copy, if confidential business information is involved), the final report of each study and all underlying data (''the report and data'') to EPA no later than 14 weeks prior to exceeding the applicable production volume limit. The final report shall contain the contents specified in 40 CFR 792.185.

(D)(*1*) Except as described in paragraph (a)(2)(iii)(D)(*2*), if, within 6 weeks of EPA's receipt of a test report and data, the person receives written notice that EPA finds that the data generated by a study are scientifically invalid, the person is prohibited from further manufacture and import of the PMN substance beyond the applicable production volume limit.

(*2*) The person may continue to manufacture and import the PMN substance beyond the applicable production limit only if so notified, in writing, by EPA in response to the person's compliance with either of the following paragraphs (a)(2)(iii)(D)(*2*)(*i*) or (a)(2)(iii)(D)(*2*)(*ii*) of this section.

(*i*) The person may reconduct the study. If there is sufficient time to reconduct the study and submit the report and data to EPA at least 14 weeks before exceeding the production limit as required by paragraph (a)(2)(iii)(C)(*3*) of this section, the person shall comply with paragraph (a)(2)(iii)(C)(*3*) of this section. If there is insufficient time for the person to comply with paragraph (a)(2)(iii)(C)(*3*) of this section, the person may exceed the production limit and shall submit the report and data in triplicate to EPA within a reasonable period of time, all as specified by EPA in the notice described in paragraph (a)(2)(iii)(D)(*1*) of this section. EPA will respond to the person in writing, within 6 weeks of receiving the person's report and data.

(*ii*) The person may, within 4 weeks of receiving from EPA the notice described in paragraph (a)(2)(iii)(D)(*1*) of this section, submit to EPA a written report refuting EPA's finding. EPA will respond to the person in writing, within 4 weeks of receiving the person's report.

(E) The person is not required to conduct a study specified in paragraph (a)(2)(iii) of this section if notified in writing by EPA that it is unnecessary to conduct that study.

(iv) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

27. By adding new § 721.5185 to read as follows:

§ 721.5185 Morpholine, 4-(1-oxo-2-propenyl)-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as morpholine, 4-(1-oxo-2-propenyl)- (PMN P–95–169; CAS No. 5117–12–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iv), (a)(3)(i), (a)(3)(ii), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(5)(xv), (a)(6)(v), (b) (concentration set at 0. 1 percent), and (c). The following material has been tested in accordance with the American Society for Testing Materials (ASTM) F739 method and found by EPA to satisfy the consent order's and § 721.63(a)(2)(i) requirements for dermal protection to 100 percent PMN substance. The following gloves have been tested in accordance with the ASTM F739 and found to satisfy the requirement for use by EPA: Safety 4/4H EVOH/PE laniinate, Ansell Edmont Neoprene number 865, and Solvex Nitrile Rubber number 275. Gloves and other dermal protection may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. For additional dermal protection materials, a company must submit all test data to the Agency and must receive written Agency approval for each type of material tested prior to use of that material as worker dermal protection. However, for the purposes of determining the imperviousness of gloves, up to 1 year after the commencement of commercial manufacture or import, the employer may use the method described in § 721.63 (a)(3)(ii), thereafter, they must use the method described in § 721.63 (a)(3)(i).

(ii) [Reserved]

(iii) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0. 1 percent), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(v), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), (g)(4)(iii), and (g)(5).

(iv) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (a), (c), (f), (p): First trigger (1 year), second (1,500,000), and third (2,000,000) or 1 year whichever is greater then 7,750,000 or 5 years after the commencement of commercial manufacture, whichever comes later and § 721.80(y)(1).

(v) *Disposal*. Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). Disposal by landfill must go to a RCRA hazardous waste landfill.

(vi) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

28. By adding new § 721.5380 to subpart E to read as follows:

§ 721.5380 Mixed alkyl phenolic novolak resin (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as mixed alkyl phenolic novolak resin (PMN P–98–718) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

29. By adding new § 721.5465 to subpart E to read as follows:

§ 721.5465 Amine salt of organic acid (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as amine salt of organic acid (PMN P–98–1172) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

30. By adding new § 721.9508 to subpart E to read as follows:

§ 721.9508 Perfluorinatedalkyl polyhydroxysilane (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as perfluorinatedalkyl polyhydroxysilane (PMN P–95–1400) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(v), (g)(5). The following statement shall appear on each label as specified in § 721.72(b) and the MSDS as specified in § 721.72(c): This substance may cause death if inhaled.

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(y)(1). Use in any formulation that contains alkylbenzenesulfonate emulsifiers.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125 (a), (b), (c), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

31. By adding new § 721.9509 to subpart E to read as follows:

§ 721.9509 Perfluorinatedalkyl polyalkoxysilane (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as perfluorinatedalkyl polyalkoxysilane (PMN P–95–1410) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program*. Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(i), (g)(1)(ii), (g)(1)(iii), (g)(1)(iv), (g)(1)(vi), (g)(1)(viii), (g)(1)(ix), (g)(2)(i), (g)(2)(ii), (g)(2)(v), (g)(5). The following statement shall appear on each label as specified in § 721.72(b) and the MSDS as specified in § 721.72(c): This substance may cause death if inhaled.

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(y)(1). Use in any formulation that contains alkylbenzenesulfonate emulsifiers.

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125 (a), (b), (c), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

32. By adding new § 721.9513 to subpart E to read as follows:

§ 721.9513 Modified magnesium silicate polymer (generic). .

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as modified magnesium silicate polymer (PMN P–98–604) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(1), (w)(1), and (x)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

33. By adding new § 721.9573 to subpart E to read as follows:

§ 721.9573 Substituted perfluoroalkyl sulfonamide (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a substituted perfluoroalkyl sulfonamide (PMN P–98–645) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

34. By adding new § 721.9672 to subpart E to read as follows:

§ 721.9672 Amides, tall-oil fatty, N-[2-[2-hydroxyethyl)amino]ethyl], reaction products with sulfur dioxide; fatty acids, tall-oil, reaction products with 1-piperazineethanamine and sulfur dioxide; fatty acids, tall-oil reaction products with sulfur dioxide and triethylenetetramine.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as amides, tall-oil fatty, *N*-[2-[2-hydroxyethyl)amino]ethyl], reaction products with sulfur dioxide; fatty acids, tall-oil, reaction products with 1-piperazineethanamine and sulfur dioxide; fatty acids, tall-oil reaction products with sulfur dioxide and triethylenetetramine (PMN P–98–725; CAS Nos. 202483–48–5, 203809–20–5, and 204401–83–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

35. By adding new § 721.9785 to subpart E to read as follows:

§ 721.9785 Benzenesulfonic acid, 2,2′-[(1E)-1,2- ethenediyl] bis[5-[[4-(methylamino)-6-[[4-[(methylamino)carbonyl]phenyl]amino]-1,3,5-triazin-2-yl]amino]-,disodium salt.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as benzenesulfonic acid, 2,2′-[(1E)-1,2-ethenediyl] bis[5-[[4-(methylamino)-6-[[4-[(methylamino)carbonyl]phenyl]amino]-1,3,5-triazin-2-yl]amino]-,disodium salt (PMN P–98–475; CAS No. 180850–95–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (f) and (q).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance as specified in § 721.125 (a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

36. By adding new § 721.9790 to subpart E to read as follows:

§ 721.9790 Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2-hydroxypropyl) amino]- 6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-, disodium salt, compd. with 2,2′,2″-nitrilo-tris[ethanol] (1:2); Benzenesulfonic acid, 5-[[4-[bis(2-hydroxyethyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-[2-[4-[[4-[bis(2-hydroxypropyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl]ethenyl]-, disodium salt, compd. with 2,2′,2″-nitrilotris[ethanol] (1:2).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as a Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[5-[[4-[bis(2hydroxypropyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-, disodium salt, compd. with 2,2′,2″-nitrilotris[ethanol] (1:2); Benzenesulfonic acid, 5-[[4-[bis(2-hydroxyethyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-[2-[4-[[4-[bis(2-hydroxypropyl)amino]-6-[(3-sulfophenyl)amino]-1,3,5-triazin-2-yl]amino]-2-sulfophenyl] ethenyl]-, disodium salt, compd. with 2,2′,2″-nitrilotris[ethanol] (1:2) (PMN P–98–716; CAS Nos. 198716–46–0 and 198716–48–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notfication requirements*. The provisions of § 721.185 apply to this section.

37. By adding new § 721.9795 to subpart E to read as follows:

§ 721.9795 Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[(4,6-dichloro-1,3,5-triazin-2-yl) amino]-, disodium salt, substituted with dialkyl amines (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as a benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[(4,6-dichloro-1,3,5-triazin-2-yl)amino]-, disodium salt, substituted with dialkyl amines (PMN P–98–774) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (v)(1), (w)(1), (x)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

38. By adding new § 721.9798 to subpart E to read as follows:

§ 721.9798 Benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[5-[[4-substituted-6-substituted-1,3,5-triazin-2-yl]amino]-, sodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a benzenesulfonic acid, 2,2′-(1,2-ethenediyl)bis[5-[[4-substituted-6-substituted-1,3,5-triazin-2-yl]amino]-, sodium salt (PMN P–98–1222) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

39. By adding new § 721.9810 to subpart E to read as follows:

§ 721. 9810 Substituted amino alkyl triazinyl benzenesulfonic acid derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted amino alkyl triazinyl benzenesulfonic acid derivative (PMN P–98–1043) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

40. By adding new § 721.9965 to subpart E to read as follows:

§ 721.9965 Fatty acids, C_{10-13} - branched, vinyl esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as fatty acids, C_{10-13} - branched, vinyl esters (PMN P–97–482; CAS No. 184785–38–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2), (a)(3), (a)(4), (a)(5)(ii) (if data on Cartridge Service Life Testing has been reviewed and approved in writing by EPA). The following respirators may be used as specified in § 721.63 (a)(5)(xii), (a)(5)(xiii), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (a)(6)(v), (b) (concentration set at 1.0 percent), and (c). As an alternative to the respiratory requirements listed here, a manufacturer, importer, or processor may choose to follow the NCEL provisions listed in the TSCA section 5(e) consent order for this substance. The NCEL is 1 ppm.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(i), (g)(1)(iii), (g)(1)(v), (g)(1)(vi), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(4) and (b)(4) (N=6).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 99–373]

Delegate Authority to the Wireless Telecommunications Bureau Concerning Procedures for Assigning Domestic Maritime Mobile Service Identities (MMSIs)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document delegates authority to the Chief, Wireless Telecommunications Bureau to enter into written agreements on a nondiscriminatory basis with qualified entities who desire to issue domestic MMSIs. The Commission takes this action to reduce unnecessary administrative burdens and processing delays for both the maritime community and the Commission.

DATES: Effective February 4, 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 *Order* FCC 99–373, adopted on November 24, 1999, and released on December 15, 1999. The full text of this *Order* 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.

2. On March 6, 1997, we released a Public Notice stating that we were considering revising the procedures governing the assignment of maritime mobile service identities (MMSIs). We stated that we were considering privatizing the issuance of MMSIs by providing blocks of numbers to qualified entities for distribution to ship vessel operators. By this Public Notice, we invited qualified parties to express their interest in participating in distributing MMSIs to ship vessel operators.

3. Our objective was to establish a procedure whereby certain private sector entities would (1) issue an MMSI to any U.S. vessel operator; (2) collect and store information in an electronic database about each vessel issued an MMSI; and, (3) provide database access

to the U.S. Coast Guard. We stated that technical details for this procedure (*e.g.,* where the MMSI database will reside, and how to ensure database access for all parties) would be developed upon mutual agreement between the participants, the Commission, and the U.S. Coast Guard. We have received letters from seven parties expressing interest in issuing domestic MMSIs and supporting our effort to privatize the procedures for issuing domestic MMSIs. We believe that multiple entities will allow increased options for vessel operators to choose an MMSI and that competition between the entities will help insure reasonable fees.

4. In order to expedite the issuing of domestic MMSIs by private entities, we are amending § 0.331 to delegate authority to the Chief, Wireless Telecommunications Bureau to enter into written agreements on a nondiscriminatory basis with qualified entities who desire to issue domestic MMSIs. The form and general terms of these agreements will be announced at a later date by Public Notice, as well as the names and addresses of entities with whom we have entered into written agreements. This list of entities will be updated and announced by Public Notice as necessary. This delegation of authority will reduce unnecessary administrative burdens and processing delays for both the maritime community and the Commission and allow us to expedite the issuing of domestic MMSIs.

5. Our decision to delegate authority to the Chief, Wireless Telecommunications Bureau is procedural in nature and therefore 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).

Ordering Clauses

6. The authority 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), part 0 of the Commission's rules IS AMENDED as set forth in the rule changes below, effective upon the adoption date of this *Order.*

List of Subjects in 47 CFR Part 0

Administrative practice and procedure.

Federal Communications Commisson.

Magalie Roman Salas,

Secretary.

Accordingly, Title 47 of the Code of Federal Regulations, Part 0, is 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 0.131 paragraph (n) is revised to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(n) Administers the Commission's commercial radio operator (part 13 of this chapter) and amateur radio programs (part 97 of this chapter) and the program for construction, marking and lighting of antenna structures (part 17 of this chapter) and the issuing maritime mobile service identities (MMSIs).

* * * * *

[FR Doc. 00–176 Filed 1–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 96–46; FCC 99–341]

Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on remand.

SUMMARY: This document amends various Commission rules in connection with the open video system proceeding as a result of rulings in the United States Court of Appeals Fifth Circuit case, *City of Dallas, Texas* v. *FCC.* The Fifth Circuit considered consolidated appeals of the Commission's open video system rules, affirming in part, reversing in part, and remanding in part, those rules to meet the needs of consumers and competitive entities.

DATES: Effective January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Steve Broeckaert at (202) 418–7200 or via internet at sbroecka@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order on Remand,* CS Docket No. 96–46, FCC 99–341, adopted November 9, 1999 and released November 19, 1999. The Commission adopted proposed rules on Open Video Systems in *Notice of Proposed Rule Making,* 61 FR 10496 (1996). The complete text of this *Order on Remand* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW Washington, D.C. 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036, or may be reviewed via internet at http://www.fcc.gov/csb/.

Synopsis of Order on Remand

I. Introduction and Background

1. In this *Order on Remand,* the Commission amends its rules in accordance with the Fifth Circuit's decision in *City of Dallas, Texas* v. *FCC* which reviewed consolidated appeals of the Commission's open video system rules. The Telecommunications Act of 1996 (''1996 Act'') added section 653 to the Communications Act of 1934, establishing open video systems as a framework for entry into the video programming marketplace. The Commission adopted a series of orders prescribing rules and policies governing the establishment and operation of open video systems. Among the decisions reached in rulemakings implementing the open video system provision of the 1996 Act, the Commission concluded that Congress did not intend to restrict open video system service to telephone companies alone, and permitted non-local exchange carriers and cable operators to operate, and to obtain carriage on open video systems where consistent with the public interest, convenience, and necessity.

2. Five petitions were filed with the Fifth Circuit and the challenges fell into three separate categories: (i) National Association of Telecommunications Advisors and Officers, the City of Dallas, and the U.S. Conference of Mayors challenged the impact of the Commission's open video system rules on local governments; (ii) National Cable Television Association challenged the treatment of cable operators under the video system rules; and (iii) BellSouth challenged the requirement that open video system operators obtain Commission certification before commencing construction related to open video systems.

3. The Fifth Circuit affirmed the Commission's rules: (i) limiting the fees that localities may charge to open video system operators pursuant to section 653(c)(2)(B) of the Communications Act; (ii) prohibiting localities from requiring open video systems to provide institutional networks; and (iii) prohibiting non-local exchange carrier cable operators and cable operators whose franchises have expired from becoming open video system operators

unless they face effective competition. Key provisions of the Commission's open video system rules, however, were reversed and remanded by the Fifth Circuit, requiring amendment of those rule provisions by the Commission. The following outlines the changes.

II. Key Changes

4. *Preemption of Open Video System Franchises.* Section 653(c)(1)(C) of the Communications Act provides that Parts III and IV of Title VI shall not apply to open video system operators. Included in Title VI is section 621(b)(1), which provides that a cable operator may not provide cable service without a franchise. The Commission concluded, in *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems, (''Second Report and Order''),* FCC–96–249, 11 FCC Rcd 18223 (1996) that localities are prohibited from requiring that open video system operators obtain a franchise prior to construction and operation of its system.

5. The Fifth Circuit concluded that the Commission's preemption of local franchising requirements is at odds with the 1996 Act's preservation of state and local authority. However, the Court ruled that simply saying that section 621 shall not apply to open video system operators does not expressly preempt local franchising authority, as section 601(c)(1) of the 1996 Act directs that amendments shall not be construed to modify, impair, or supercede Federal, State or local law unless expressly so provided in such Act or amendments.

6. While discussed in detail by the Court, the franchise prohibition had not been codified and the Commission had implemented no rules. Consequently, in this *Order on Remand* the Commission need not amend its rules to effectuate the Fifth Circuit's decision on this matter. The decision to impose a franchise requirement on an open video system operator is left to the discretion of a locality.

7. *Commission Certification Prior to Construction of New Facilities.* In the *Second Report and Order,* the Commission stated that open video system operators may apply for certification at any time before commencement of service. If construction of a new plant is required, however, the applicant must obtain Commission approval of its certification prior to commencement of construction. Bell South argued to the Fifth Circuit that the Commission's pre-construction certification requirement was contrary to language of sections 651 and 653 of the Communications Act. The Fifth Circuit agreed, finding that the Commission erred in adopting a pre-construction certification rule.

8. The Commission codified the pre-construction requirement at § 76.1502(a) of its rules. As a result of the Fifth Circuit's decision, the Commission deletes the pre-construction certification requirement from § 76.1502(a) of the Commission's Rules.

9. *Local Exchange Carriers as Cable Operators.* Section 653(a)(1) states that a local exchange carrier (''LEC'') may provide cable service to subscribers in its telephone service area through an open video system. In adopting rules to effectuate this provision the Commission determined that it would not permit a cable operator to become an open video system operator in its cable franchise area if effective competition is not present for video programming delivery, even if it also becomes certified as a local exchange carrier within the franchise area. The Commission concluded that although section 653(a) allows LECs, without qualification, to operate open video systems within their telephone service area, it does not apply to cable operators that are also LECs. The Commission codified this provision at § 76.1501 of its rules.

10. The Fifth Circuit disagreed with the Commission's determination, as it applied to LEC cable operators, holding that a local exchange carrier, without qualification, may provide cable service in its telephone area through an open video system. In accordance with the Fifth Circuit's decision, the Commission amends § 76.1501 to provide that the effective competition requirement does not apply to a LEC cable operator that seeks open video system certification within its cable service area.

11. *Open Video System Operator Discretion.* In the *Second Report and Order,* the Commission granted open video system operators discretion to permit carriage of competing, in-region cable operators or their affiliates' programming. This provision was codified in § 76.1503(c)(2)(v)(A) of the Commission's rules. The Fifth Circuit invalidated the Commission's rules permitting an open video system operator discretion to permit carriage of a competing, in-region cable operator's programming, finding that section 653(b)(1)(A) requires the Commission to prohibit an operator of an open video system from discriminating among video programming providers with regard to carriage on its open video system. The Fifth Circuit instructed the Commission, on remand, to forbid discrimination among video programming providers, as section 653(b)(1)(A) requires. In this *Order on Remand,* the Commission concludes that the most efficient and expeditious method of discharging the Fifth Circuit's remand is to delete § 76.1503(c)(2)(v)(A) of the Commission's rules which grants discretion to open video system operators with regard to carriage of the programming of competing, in-region cable operators and their affiliates.

III. Ordering Clauses

12. Pursuant to sections 4(i), 303(r) and 653 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 573, the Commission's rules are hereby amended.

13. The Commission's Office of Public Affairs, Reference Operation Division, shall send a copy of this *Order on Remand* including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with paragraph section 603(a) of this Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 76

Open video system.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

For the reasons discussed in the preamble, The Federal Communications Commission amends 47 CFR Part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1501 is revised to read as follows:

§ 76.1501 Qualifications to be an open video system operator.

Any person may obtain a certification to operate an open video system pursuant to Section 653(a)(1) of the Communications Act, 47 U.S.C. 573(a)(1), except that an operator of a cable system may not obtain such certification within its cable service area unless it is subject to ''effective competition'' as defined in Section 623(l)(1) of the Communications Act, 47 U.S.C. 543(l)(1). The effective competition requirement of the preceding sentence does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable

service area. A cable operator that is not subject to effective competition within its cable service area may file a petition with the Commission, seeking a finding that particular circumstances exist that make it consistent with the public interest, convenience, and necessity to allow the operator to convert its cable system to an open video system. Nothing herein shall be construed to affect the terms of any franchising agreement or other contractual agreement.

3. Section 76.1502 is amended by revising paragraph (a) to read as follows:

§ 76.1502 Certification.

(a) An operator of an open video system must certify to the Commission that it will comply with the Commission's regulations in 47 CFR 76.1503, 76.1504, 76.1506(m), 76.1508, 76.1509, and 76.1513. The Commission must approve such certification prior to the commencement of service at such a point in time that would allow the applicant sufficient time to comply with the Commission's notification requirements.

* * * * *

4. Section 76.1503 is amended by revising paragraph (c)(2)(v) to read as follows:

§ 76.1503 Carriage of video programming providers on open video systems.

* * * * *

(c) * * *

(2) * * *

(v) Notwithstanding the general prohibition on an open video system operator's discrimination among video programming providers contained in paragraph (a) of this section, a competing, in-region cable operator or its affiliate(s) that offer cable service to subscribers located in the service area of an open video system shall not be entitled to obtain capacity on such open video system, except where a showing is made that facilities-based competition will not be significantly impeded.

* * * * *

[FR Doc. 00–110 Filed 1–4–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991217342–9342–01; I.D. 120199D]

RIN 0648–AN15

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework 31 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule and technical amendment.

SUMMARY: NMFS issues this final rule to implement management measures contained in Framework (FW) 31 of the Northeast Multispecies Fishery Management Plan (FMP). These measures include: An increase in the Gulf of Maine (GOM) cod trip limit to 400 lb (181.4 kg) per day with a maximum possession limit of 4,000 lb (1,814.4 kg); modification of the manner in which allowable trip limit overages are permitted and are calculated; and closure of an inshore area comprising Massachusetts Bay and Stellwagen Bank for February 2000. These measures constitute an inseason adjustment to the measures currently in place. The intent of this rule is to reduce discards in the GOM cod fishery while still achieving mortality objectives of the rebuilding plan in the FMP. In addition, this rule corrects errors contained in the final rule published October 15, 1999 (64 FR 55821), which implemented the approved measures contained in Amendment 9 to the FMP. The October 15, 1999, rule inadvertently omitted regulatory text to implement the approved Atlantic halibut measures.

DATES: Effective January 5, 2000, except for amendments to § 648.81 which are effective January 31, 2000, and the revision of § 648.88 (a)(1) which is effective November 15, 1999.

ADDRESSES: Copies of the FW 31 document, its Regulatory Impact Review (RIR), the Environmental Assessment (EA), and other supporting documents, and documents regarding Amendment 9 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Thomas A. Warren, Fishery Management Specialist, 978–281–9347.

SUPPLEMENTARY INFORMATION:

GOM Cod Measures

FW 27, which became effective on May 1, 1999, implemented measures to address overfishing and achieve the rebuilding goals of the FMP for GOM cod for the 1999 fishing year (May 1, 1999, through April 30, 2000). Because the status of the GOM cod stock was characterized by the Multispecies Monitoring Committee as collapsing, the New England Fishery Management Council (Council) chose a target total allowable catch (TAC) of 782 mt, which corresponded to the precautionary fishing mortality rate (F) goal of $F_{0.01}$. This TAC was selected as a target to ensure that the F_{MAX} TAC of 1,340 mt was not exceeded. FW 27 increased the size and duration of closed areas, decreased the cod landing limit to 200 lb (90.7 kg) per day at sea (DAS), and required the Regional Administrator (RA) to reduce the landing limit to between 5 and 100 lb (2.3 kg and 45.4 kg) per DAS, when 402 mt of GOM cod was landed (30 percent of the F_{MAX} target and 50 percent of the $F_{0.1}$ target). The 200-lb (90.7-kg) landing limit was reduced to 30 lb (13.6 kg) per DAS on May 28, 1999, based upon the RA's projection that 402 mt had been landed. Meanwhile, industry reports of high levels of discarding of cod precipitated the Council's May 28, 1999, request for emergency action to raise the GOM cod trip limit. NMFS determined that the situation did not meet the requirements for emergency action. Instead, on August 3, 1999, NMFS implemented interim measures to reduce levels of discarding and overall fishing mortality. These interim measures consisted of a landing limit of 100 lb (45.4 kg) per DAS, with a maximum possession limit of 500 lb (226.8 kg). The procedure for landing trip limit overages and the associated accounting of DAS (running clock) were revised to limit the amount of allowed overage to the equivalent of 1 day's landing limit. The interim measures are in effect through January 30, 2000.

FW 31 contains three measures with respect to GOM cod: (1) A GOM cod landing limit of 400 lb (181.4 kg) per DAS with a maximum possession limit of 4,000 lb (1,814.4 kg); (2) the closure, in February 2000, of an area of the GOM comprising Massachusetts Bay and Stellwagen Bank to vessels using gear capable of catching groundfish, with the exception of vessels using scallop dredge gear; and (3) an extension of the

effective date of the running clock measure as implemented in the interim measures. Although a landing limit increase to 400 lb/DAS (181.4 kg/DAS) could contribute to increased fishing mortality, the other management measures (additional closed area and interim running clock) serve to limit fishing mortality. Although the projected landings of GOM cod under the 400-lb (181.4-kg) landing limit exceed the F_{MAX} TAC by 5 percent, the projection does not include potential reductions in catch due to the proposed closure or running clock. In contrast, the current interim measures do not include the proposed February closed area, and FW 27 included neither the proposed closed area nor a limitation on the use of the running clock.

This trip limit change means vessels may land 400 lb (181.4 kg) of GOM cod for the first 24-hr period of a trip, or portion thereof, after a vessel has called into the DAS program to start a trip on which cod are landed. For example, a vessel that starts a trip at 6:00 a.m. may call out of the DAS program at 11:00 a.m. and land up to 400 lb (181.4 kg) of cod; but the vessel cannot land any more GOM cod on a subsequent trip until at least 6:00 a.m. on the following day.

For trips longer than 24 hr, a vessel may land up to an additional 400 lb (181.4 kg) of cod for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,814.4 kg) per trip. For example, a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than, 800 lb (362.8 kg) of GOM cod. That vessel operator must not call out of the DAS program or depart from port until the remainder of the additional 24-hr block of the DAS has elapsed. For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 800 lb (362.8 kg) of cod, provided that the vessel operator does not call out of the DAS program, or leave port, until 48 hr have elapsed from the beginning of the trip. In effect, the use of the ''running clock'' is restricted to 24-hour blocks.

Georges Bank Cod Disapproved Measure

FW 30, which was effective July 29, 1999, was the portion of the multispecies annual adjustment for fishing year 1999 that contained measures for Georges Bank cod. FW 30 established a cod daily landing limit of 2,000 lb (907.2 kg) per DAS starting August 15, 1999, with a maximum possession limit of 20,000 lb (9,072 kg) for vessels enrolled in the GOM Cod Trip Limit Exemption Program. FW 30 also established a so-called ''backstop measure'' that authorized the RA to decrease the trip limit when 75 percent of the target TAC for Georges Bank cod is projected to be reached. Conversely, the RA was authorized to increase the trip limit if it was anticipated that 75 percent of the target TAC for Georges Bank cod would not be reached by the end of the fishing year.

FW 31 contains one measure with respect to Georges Bank cod—the elimination of the RA's inseason authority to adjust the Georges Bank cod trip limit. The Council proposed this measure because of its concern that a decrease in the landing limit could increase cod discards. The analysis supporting FW 30 assumed that the 2,000-lb landing limit would be in effect at the start of the fishing year (May 1, 1999). Projected landings for Georges Bank cod in that instance were calculated to be 5,947 mt. Because the 2,000-lb (907-kg) trip came into effect August 15, 1999, and not at the beginning of the fishing year, it is likely that the projected landings of 5,947 mt is an underestimation. Therefore, NMFS disapproved the measure because it would increase the risk of exceeding the TAC and violate national standard 1, which requires that management measures prevent overfishing.

The RA may set a trip limit at the appropriate level in order to achieve a balance between the conflicting goals of limiting fishing mortality and minimizing discards. The effect on discards of a reduction of the trip limit by the RA depends on the specific trip limit implemented and the circumstances under which it is used.

Technical Amendment

Information concerning Amendment 9 to the FMP was provided in the preamble of the proposed rule (64 FR 13952, March 23, 1999), in the supplement to the proposed rule (64 FR 19111, April 19, 1999), and in the final rule (64 FR 55821, October 15, 1999), and is not repeated here. Among other management measures implemented under Amendment 9, the final rule added Atlantic halibut to the management unit of the FMP and implemented management measures for that species. Consistent with the intent of Amendment 9, the October 15, 1999, final rule revised § 648.88(a)(1) to specify the possession limit for Atlantic halibut for open access multispecies handgear permit vessels. However, § 648.88(a)(1) had been suspended by the GOM interim cod rule (64 FR 42042, August 3, 1999). Therefore, this final rule corrects the error by revising § 648.88(a)(1) to specify the halibut measure.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings, where comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analysis and provide an opportunity to comment on them specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to the RA that the measures be published either as a final rule, or as a proposed rule if additional public comment is necessary.

The initial and final meetings for Framework 31 at which public comment was received were on August 10–11, 1999, and September 21–23, 1999, respectively. The Council's Groundfish Committee and Industry Advisory Panel also held meetings and took public comment on the proposals on August 25 and September 9, 1999. Documents summarizing the Council's proposed action and the analysis of biological, economic, and social impacts of this and alternative actions were available for public review 1 week prior to the final meeting, as is required under the framework adjustment process. Written comments were accepted up to and during that meeting.

Comments and Responses

Comment 1: Several members of the fishing industry stated that, because the February closure area is based on 30′ squares, it is overly burdensome on inshore vessels. The commenters said the February closure area closes some areas within the squares where cod catch rates are low and other fishery opportunities exist. Instead, they supported Option 2, which proposed smaller year-round closures and other measures. One individual who supported Option 2 area closures also advocated prohibiting night fishing by mobile gear in the western GOM.

Response: The Council considered the Option 2 area closures and other measures, but rejected the proposal in part because the analysis showed that the proposed closures were not sufficient to achieve the FMP objectives, and because the U.S. Coast Guard commented that the closures would

present enforcement difficulties due to their small size, irregular configuration, and location. The prohibition on night fishing was not available for consideration in any of the options that were drafted and analyzed for the final framework meeting.

Comment 2: Three members of the processing and wholesaling sector, and several other individuals, opposed limiting DAS during the months of February through April, as proposed in Option 2. They indicated the importance of these months to fishermen and fish processors because there is excess market demand and high prices during those months. They were concerned that further disruption to the supply of fresh fish during this period would cause their customers to seek alternative sources of product, thus resulting in permanent loss of fresh fish markets in the region.

Response: The Council did not adopt the Option 2 provision to limit DAS during the months of February through April, primarily because analyses indicated that the proposed limitations would not reduce effort substantially then, so that such a measure would have little or no contribution to conserving GOM cod. The Council also took into account concerns of the industry regarding DAS limitations during these months in some areas in its rejection of Option 2.

Comment 3: Several members of the fishing industry commented that a trip limit of 200 lb (90.7 kg) would still result in significant discards at certain times and in certain areas, especially upon the re-opening of a seasonally closed area. All commenters supported the goal of reducing discards.

Response: A landing limit of 400 lb (181.4 kg) per day would result in less discarding than would a 200-lb (90.7-kg) limit. Although a 400-lb (181.4-kg) limit would not entirely eliminate discards, a landing limit at this level is appropriate for achieving the goal of minimizing discards while still achieving the fishing mortality rate objective for GOM cod.

Comment 4: One individual opposed eliminating the RA's authority to reduce the Georges Bank cod trip limit without other measures to prevent exceeding the target TAC. Several members of the fishing industry and one U.S. Congressman supported elimination of that authority.

Response: NMFS disapproved this measure, as explained elsewhere in the preamble of this rule.

Classification

The RA determined that this framework adjustment to the FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Notice and opportunity for public comment were provided for the management measures implemented by this rule. The technical changes include corrections to an existing set of regulations for which full prior notice and opportunity for comment were provided. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B), finds that providing additional opportunity for public comment is unnecessary. Because the provisions of this rule related to the GOM cod trip limit relieve a restriction, under 5 U.S.C. 553(d)(1) they are not subject to the 30-day delay in effectiveness. Therefore, the trip limit change will become effective upon publication. Fishermen will be notified of the new daily landing limit and possession limit via NOAA weather radio, U.S. Coast Guard announcements, and letters to permit holders. The technical change imposes no new requirements and is not subject to the 30-day delay in effective date provisions of 5 U.S.C. 553(d).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Consequently, a regulatory flexibility analysis has not been prepared. Nevertheless, the socioeconomic impacts on affected small entities were considered in the RIR contained in the supporting analyses for Framework 31. The short-term impact of the measures on ex-vessel revenue is estimated to result in an increase of approximately $500,000.

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

List of Subjects in 50 CFR Part 648

Commercial Fisheries, Fish, Fisheries.

Dated: December 27, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

§ 648.10 [Amended]

2. In § 648.10, lift the suspension placed on paragraphs (f)(3)(i) and (f)(3)(ii) at 64 FR 42044 (August 3, 1999), and remove paragraph (f)(3)(iii).

§ 648.14 [Amended]

3. In § 648.14, lift the suspension placed on paragraphs (c)(23), (c)(24), (c)(25) at 64 FR 42045 (August 3, 1999), and remove paragraphs (c)(27), (c)(28), (c)(29), and (c)(30).

4. In § 648.81, revise paragraph (g)(1) introductory text, and add paragraph (g)(1)(vi) to read as follows:

§ 648.81 Multispecies closed areas.

* * * * *

(g) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, GOM Rolling Closure Areas I through VI, as described in paragraphs (g)(l)(i) through (vi) of this section, for the times specified in paragraphs (g)(l)(i) through (vi) of this section, except as specified in paragraphs (d), and (g)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter).

* * * * *

(vi) *Rolling Closure Area VI.* From February 1 through February 29, 2000, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area VI, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA VI

[February 1–February 28]

Point	N. Lat.	W. Long. (*)
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

(*) or other intersecting line:
1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.

* * * * *

5. In § 648.82, lift the suspension placed on paragraph (b)(3)(i) at 64 FR 42045 (August 3, 1999) and revise it, and remove paragraph (b)(3)(iii) to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

* * * * *

(b) * * *

(3) * * *

(i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions. Such a vessel is not subject to a possession limit for other NE multispecies.

* * * * *

6. In § 648.86, lift the suspension placed at 64 FR 42045 (August 3, 1999) on paragraphs (b)(1)(i), (b)(1)(ii)(A), and (b)(3), revise paragraphs (b)(1)(i) and (b)(1)(ii)(A) to read as set forth below, and remove paragraphs (b)(1)(iv) and (b)(5).

§ 648.86 Multispecies possession restrictions.

* * * * *

(b) * * *

(1) * * *

(i) Except as provided in paragraph (b)(1)(ii) and (b)(4) of this section, and subject to the call-in provision specified in Sec.648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land only up to 400 lb (181.8 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g. a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 400 lb (181.8 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 400 lb (181.8 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 800 lb (363.6 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr but less than 48 hr) may land up to an additional 400 lb (181.8 kg) of cod for that trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) * * *

(A) The vessel operator does not call-out of the DAS program as described under Sec.648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 800 lb (363.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

* * * * *

7. In § 648.88: Paragraph (a)(1) is revised effective November 15, 1999 to read as set forth below; paragraph (a)(3) is removed.

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, one Atlantic halibut, per trip, and unlimited amounts of the other NE multispecies, provided that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–9352–01; I.D. 121099C]

RIN 0648–AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Permit Requirements for Vessels, Processors, and Cooperatives Wishing to Participate in the Bering Sea and Aleutian Islands Pollock Fishery Under the American Fisheries Act

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues an emergency interim rule to implement permit requirements for vessels, processors, and cooperatives wishing to participate in the Bering Sea and Aleutian Islands management area (BSAI) pollock fishery under the American Fisheries Act (AFA). This emergency interim rule is necessary to provide participants in the BSAI pollock fishery with the opportunity to apply for permits to participate in the BSAI pollock fishery prior to the scheduled start of the fishery on January 20, and to implement sideboard restrictions to protect other Alaska fisheries from negative impacts as a result of fishery cooperatives formed under the AFA.

DATES: Effective December 30, 1999 through June 27, 2000. Comments on the emergency rule must be received by January 20, 2000.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, 709 West 9th Street, Juneau, AK 99801, and marked Attn: Lori Gravel.

Copies of the Environmental Assessment/ Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 61/61/13/8 and for this action may be obtained from North Pacific Fishery Management Council, 605 West 4th Ave, Suite 306, Anchorage, AK 99501, 907–271–2809. Send comments on collection-of-information requirements to the NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION:

NMFS manages the U.S. groundfish fisheries in the exclusive economic zone of the BSAI and Gulf of Alaska (GOA) under the fishery management plans for the groundfish fisheries of the BSAI and GOA (FMPs). With Federal oversight, the State of Alaska manages the FMPs for Commercial King Crab and Tanner Crab fisheries in the BSAI and the Scallop Fishery off Alaska. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR 600.

American Fisheries Act—Background Information

The AFA made profound changes in the management of the groundfish fisheries of the BSAI and, to a lesser extent, the groundfish fisheries of the

GOA and crab fisheries of the BSAI. With respect to the groundfish and crab fisheries off Alaska, the AFA established a new allocation scheme for BSAI pollock thatallocates 10 percent of the BSAI pollock total allowable catch (TAC) to the Western Alaska Community Development Quota (CDQ) Program and, after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships;provided for the buyout and scrapping of nine pollock catcher/processors through a combination of $20 million in Federal appropriations and $75 million in direct loan obligations; established a fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher vessels delivering to inshore processors for the purpose of repaying the $75 million direct loan obligation; listed by name and/or provided qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery; increased observer coverage and scale requirements for AFA catcher/processors; established limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors; required that NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives which form around a specific inshore processor and agree to deliver the bulk of their catch to that processor; required harvesting and processing restrictions (commonly known as ''sideboards'') on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and established excessive share harvesting caps for BSAI pollock and directed the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Since the passage of the AFA in October 1998, NMFS has begun to implement specific provisions of the AFA through a variety of mechanisms. For the 1999 fishing year, NMFS implemented the new AFA pollock allocations and harvest restrictions on catcher/processors through the interim and final BSAI harvest specifications (64 FR 50, January 4, 1999; and 64 FR 12103, March 11, 1999). Required changes to the CDQ program were implemented through an emergency interim rule (64 FR 3877, January 26, 1999; extended at 64 FR 34743, June 29, 1999). The increase in observer coverage levels for pollock catcher/processors and regulatory authority to manage AFA catcher/processor sideboard limits through directed fishing closures were implemented through a separate emergency interim rule (64 FR 3435, January 22, 1999; corrected at 64 FR 7814, February 17, 1999; and extended at 64 FR 33425, June 6, 1999). In December 1998, NMFS administered the buyout of the nine catcher/processors declared ineligible under the AFA, and is currently overseeing the scrapping of the eight vessels scheduled for scrapping under the AFA.

The Council has taken an active role in the development of management measures to implement the various provisions of the AFA. The Council began consideration of the implications of the AFA during a special meeting in November 1998, during which it began consideration of AFA-related actions that were required for the 1999 fishing year. At its December 1998 meeting, the Council voted to recommend approval of the two emergency rules cited here, recommended AFA-related provisions to the 1999 BSAI harvest specifications for groundfish, and began an analysis of a suite of AFA-related management measures that subsequently became known as Amendments 61/61/13/8 to the FMPs for the BSAI groundfish fishery, GOA groundfish fishery, BSAI king and Tanner crab fishery, and Alaska scallop fishery, respectively. The Council conducted an initial review of Amendments 61/61/13/8 and related AFA measures at its April 1999 meeting, and took final action on these amendments at its June 1999 meeting.

The suite of permit requirements in this emergency interim rule duplicates, and would give immediate effect to, the permit requirements proposed under Amendments 61/61/13/8. NMFS is issuing this emergency interim rule to give immediate effect to all AFA-related permit requirements so that the fishing industry has the opportunity to apply for and receive AFA-related fishing permits prior to the start of the 2000 fishing year. An emergency rule is necessary to provide an opportunity for inshore catcher vessels to form cooperatives for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures that are being published in separate rulemakings. Without this emergency interim rule, the inshore sector of the BSAI pollock industry would be unable to form cooperatives prior to the start of the 2000 fishing year as provided for in the AFA, and would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS' Steller sea lion conservation measures. In addition, this emergency action is necessary to implement section 211(c)(1) of the AFA which mandates sideboard restrictions to prevent AFA catcher vessels from exceeding ''in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery, [and] protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the AFA or fishery cooperatives in the directed pollock fishery.'' Such sideboard protections must be implemented prior to January 1, 2000, to prevent adverse economic impacts on the participants of other groundfish and crab fisheries that open January 2000.

The permitting requirements contained in this emergency interim rule will be repeated in the proposed rule to implement Amendments 61/61/13/8 to provide the public an opportunity to comment on AFA permit requirements before they are made effective on a permanent basis. If Amendments 61/61/13/8 are approved by NMFS, then this emergency interim rule would be superseded by the final rule to implement the amendments.

This emergency interim rule establishes new permit requirements for AFA catcher/processors, AFA catcher vessels, AFA motherships, AFA inshore processors, and AFA inshore cooperatives. Any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any processor that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI is required to maintain a valid AFA permit onboard the vessel or at the plant location at all times while non-CDQ pollock is being harvested or processed. These new AFA permits do not exempt a vessel operator, vessel owner, or pollock processor from any other applicable permit or licensing requirements required by State or Federal regulations. However, vessels fishing for BSAI pollock under the CDQ program and processors processing pollock harvested under the CDQ program are not required to have AFA permits in order to participate in the CDQ fishery.

This emergency interim rule does not establish an application deadline for

vessel or processor permits. However, once issued, AFA vessel and processor permits are valid until December 31, 2004. AFA vessel and processor permits may not be used on or transferred to another vessel or processor, except under the replacement vessel provisions outlined here. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. In contrast to vessel and processor permits, AFA inshore cooperative permits are valid only for the fishing year for which they are issued, but are renewable on an annual basis.

AFA Permit Applications

Application forms for all AFA permits are available upon request from the NMFS Alaska Region (see **ADDRESSES**) and are available for downloading on the NMFS Alaska Region home page (http://www.fakr.noaa.gov). AFA vessel and processor permits will be issued to the current owner of a qualifying vessel or processor if he/she submits to the Regional Administrator a completed AFA permit application that is subsequently approved. This emergency interim rule also establishes an appeals process under which applicants may appeal the NMFS determinations related to AFA permits and AFA inshore cooperative allocations. The appeals process for AFA permits is similar to the process currently in place for the individual fishing quota program and license limitation program (LLP) appeals.

AFA Catcher/Processor Permits

Under the AFA, the statutory list of qualified catcher/processors took effect on January 1, 1999, and NMFS has already issued AFA catcher/processor permits to the owners of all qualified catcher/processors. Under this emergency interim rule, currently permitted AFA catcher/processors will be issued new AFA permits that will be valid until December 31, 2004. NMFS will reissue AFA catcher/processor permits automatically, and the owners of AFA catcher/processors are not required to re-submit AFA permit applications. Two categories of AFA catcher/processor permits will be issued: Vessels listed by name in sections 208(e)(1) through (20) of the AFA will be reissued unrestricted AFA catcher/processor permits; vessels qualifying for AFA catcher/processor permits under section 208(e)(21) will be reissued restricted AFA catcher/processor permits, which limits them, in the aggregate, to harvesting no more than 0.5 percent of the catcher/processor sector TAC allocation.

AFA Catcher Vessel Permits

Under the AFA, a catcher vessel is qualified to fish for BSAI pollock if it is listed by name in the AFA or if its history of participation in the BSAI pollock fishery meets certain criteria set out in the AFA. Under this emergency interim rule, AFA catcher vessel permits may be endorsed to authorize directed fishing for pollock for delivery to catcher/processors, AFA inshore processors, and/or AFA motherships. Under the AFA, a catcher vessel may be authorized to engage in directed fishing for pollock for delivery to both AFA inshore processors and AFA motherships, depending on its qualifying catch history. However, a vessel that is eligible to deliver to catcher/processors is ineligible for an endorsement to deliver to inshore processors or motherships. An applicant for an AFA catcher vessel permit is required to indicate the sector endorsement(s) for which the vessel qualifies. NMFS is establishing an official AFA record that includes the relevant catch histories of all potentially qualifying vessels and will review for verification all claims of endorsement qualification against the official AFA record.

AFA Catcher Vessel Crab Sideboard Endorsements

Under section 211(c)(1)(A) of the AFA, the Council is required to recommend measures to limit the participation of AFA catcher vessels in BSAI crab fisheries. Section 211(c)(2)(C) of the AFA also prohibits section 208(b) catcher vessels (i.e., AFA catcher vessels eligible to deliver to catcher/processors) ''from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997.'' In June 1999, the Council developed final recommendations for limits on the participation of AFA catcher vessels in BSAI crab fisheries in order to comply with these two provisions of the AFA.

NMFS will implement these catcher vessel crab sideboard limits recommended by the Council through crab sideboard endorsements on the AFA catcher vessel permits. The owner of a catcher vessel who wishes to participate in any BSAI crab fishery must apply for and receive a sideboard endorsement for that crab species on the vessel's AFA catcher vessel permit. AFA catcher vessel permits may be endorsed for the Bristol Bay Red King Crab, St. Matthew Island blue king crab, Pribilof Island red or blue king crab, Aleutian Islands brown king crab, Aleutian Islands red king crab, Opilio Tanner crab, and Bairdi Tanner crab fisheries based on a vessel's history of participation in each of those fisheries. The specific qualifying years for each fishery are set out in § 679.4(l)(3)(ii)(D) of this emergency interim rule. While the Council's recommended qualifying years for some crab fisheries are different from the 1997 qualifying year specified in the AFA for section 208(b) catcher vessels, the practical effects of the Council's recommended qualifying years are the same as those specified in the AFA because the same set of subsection 208(b) of the AFA catcher vessels would qualify for crab sideboard endorsements under either the Council's recommended qualification criteria, or the criteria set out in section 211(c)(2)(C) of the AFA. Therefore, the Council's recommended qualifying criteria are consistent with those set forth in section 211(c)(2)(C) of the AFA.

The Council based some of its crab sideboard recommendations on whether a particular vessel is ''LLP qualified'' for a particular crab fishery. To implement this recommendation, the AFA catcher vessel permit application contains questions related to vessel catch history using the same qualifying years as the LLP program. This rule requires applicants for AFA catcher vessel permits to indicate on the permit application which AFA crab sideboard endorsements the vessel qualifies for based on the qualifying criteria set out in this rule. NMFS will review for verification all claims of qualification.

Owners of catcher vessels should be aware that qualification for a crab sideboard endorsement does not in and of itself provide sufficient authorization to participate in a BSAI crab fishery. Existing regulations require the vessel also to have a valid LLP permit for that fishery. To participate in a BSAI crab fishery, the operator of an AFA catcher vessel must have a valid LLP license for that crab fishery as well as an AFA catcher vessel permit containing an endorsement for that crab fishery.

Exemptions to Catcher Vessel Groundfish Sideboards

NMFS through subsequent rulemaking will be implementing sideboard measures to restrict AFA catcher vessels from exceeding, in the aggregate, their historic harvests in other groundfish fisheries based on recommendations made by the Council at its June 1999 meeting. These groundfish sideboards will apply to all AFA catcher vessels in the aggregate

regardless of sector and regardless of participation in a cooperative except that catcher vessels less than 125 ft whose annual BSAI pollock landings averaged less than 1700 mt from 1995–1997 (i.e., landed less than 5,100 mt of pollock over the 3-year period) are exempt from BSAI Pacific cod sideboards if they made 30 or more legal landings of BSAI Pacific cod in the BSAI directed fishery for Pacific cod. In addition, AFA catcher vessels that meet the same vessel length and BSAI pollock landing criteria and that made 40 or more legal landings of GOA groundfish would be exempt from groundfish sideboards in the GOA.

In recommending these exemptions, the Council noted that many of the AFA catcher vessels with relatively low catch histories of BSAI pollock have traditionally targeted BSAI Pacific cod and GOA groundfish during much of the year and may be only minor participants in the BSAI pollock fishery. The Council believed that imposing aggregate sideboards on such vessels in the BSAI Pacific cod fishery and GOA groundfish fisheries could severely harm the owners of such vessels given their historically high levels of participation in non-pollock fisheries, and the fact that their historic dedication to fisheries other groundfish fisheries may account for their lower catch histories of BSAI pollock during the AFA qualifying years. The owners of vessels who believe their vessel may be eligible for one or both of these exemptions must apply for the sideboard exemption on their AFA catcher vessel permit application form.

AFA Mothership Permits

Under subsection 208(d) of the AFA, three motherships are authorized by vessel name to process pollock harvested in the BSAI directed pollock fishery for delivery to motherships. Under this emergency interim rule, NMFS will issue to the owner of a mothership an AFA mothership permit if the mothership is listed by name in sections 208(d)(1) through (3) of the AFA. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also must apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and place crab processing restrictions on any entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subsection 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA inshore processors that receive pollock from a fishery cooperative. Under the AFA, these processing limits extend not only to the AFA processing facility itself, but also to any entity that directly or indirectly owns or controls a 10–percent or greater interest in the AFA mothership or in the AFA inshore processor. To implement the crab processing restrictions contained in subsection 211(c)(2)(A) of the AFA, NMFS is requiring that applicants for AFA mothership and AFA inshore processor permits disclose on their permit applications all entities directly or indirectly owning or controlling a 10–percent or greater interest in the AFA mothership or AFA inshore processor and the names of BSAI crab processors in which such entities directly or indirectly own or control a 10–percent or greater interest. An applicant for an AFA mothership or an AFA inshore processor permit who does not disclose this crab processor ownership information may receive an AFA mothership permit or an AFA inshore processor permit but will be denied an endorsement authorizing the processor to receive and process pollock harvested by a fishery cooperative.

AFA Inshore Processor Permits

Under the AFA, inshore processors are authorized to receive and process BSAI pollock harvested in the directed fishery, based on their levels of processing in 1996 and 1997. NMFS will provide to an applicant an unrestricted AFA inshore processor permit if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the inshore processing facility annually processed more than 2,000 metric tons (mt) round weight of pollock harvested in the inshore directed pollock fishery in each of 1996 and 1997. NMFS will provide to an applicant a restricted AFA inshore processor permit if the Regional Administrator determines that the inshore processing facility processed pollock harvested in the inshore directed pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round weight of pollock in each of 1996 and 1997. A restricted AFA inshore processor permit will prohibit the inshore processing facility from processing more than 2,000 mt round weight of BSAI pollock harvested in the directed fishery in any one year.

The owner of an AFA inshore processor wishing to process pollock harvested by a fishery cooperative must also have a cooperative processing endorsement on the AFA inshore processing permit. The requirements for an AFA inshore processor cooperative processing endorsement are the same as those listed for AFA motherships above.

At its June 1999 meeting, the Council also recommended that each AFA inshore processor be restricted to operating in the single geographic location in which it operated in 1996 or 1997 when processing pollock harvested in the BSAI directed pollock fishery. However, at its December 1999 meeting, the Council changed its June 1999 recommendation and recommended instead that inshore processors be held to a single geographic location during a fishing year. This revised recommendation would allow a stationary floating processor to change locations between fishing years instead of holding them to the location in which they operated in 1996 or 1997.

The purpose of this recommendation is to implement section 210(f)(1)(A) of the AFA, which includes vessels in a single geographic location in Alaska state waters. To implement this restriction, this emergency rule limits shoreside (land-based) processors to operating in the physical location in which the facility first processed pollock during a fishing year. Stationary floating processors are restricted to operating in a location within Alaska state waters that is within 5 nautical miles (nm) of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year. NMFS believes that 5 nm is an appropriate distance for this requirement because it allows the operator of a floating processor some flexibility in choosing an appropriate anchorage, but it still requires that the processor be located in the same body of water for the duration of a fishing year.

Inshore Cooperative Fishing Permits

Under this emergency interim rule, NMFS will issue to an inshore catcher vessel cooperative formed for the purpose of cooperatively managing directed fishing for pollock during 2000 an AFA inshore cooperative fishing permit if NMFS receives the cooperative's completed application by December 31, 1999, and the Regional Administrator approves it. Applications for an inshore cooperative fishing permit must be accompanied by a copy of the cooperative contract itself and by a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. The Regional Administrator will not approve applications for an inshore cooperative fishing permit that are not received by

the NMFS Alaska Region on or before December 31, 1999.

As part of the application for an inshore cooperative fishing permit, the cooperative's designated representative, who is signing the permit on behalf of the various members, is required to certify that: (1) Each catcher vessel in the cooperative is a qualified catcher vessel meaning that the vessel owner(s) has applied for an AFA catcher vessel permit and has delivered more pollock harvested in the BSAI pollock directed pollock fishery to the designated AFA inshore processor than to any other AFA inshore processor during the year prior to the year in which the cooperative fishing permit would be in effect, (2) the cooperative contract was signed by the owners of at least 80 percent of the qualified catcher vessels that delivered pollock harvested in the BSAI directed pollock fishery to the cooperative's designated AFA inshore processor during the year prior to the year in which the cooperative fishing permit would be in effect, (3) the cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor, and (4) each member vessel is an AFA-eligible catcher vessel and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI. A catcher vessel that is ineligible to harvest BSAI pollock due to permit sanctions or to lack of an AFA or other required permit may not be a member of an inshore cooperative that receives an inshore cooperative fishing permit. To add or subtract a qualified catcher vessel to or from a cooperative fishing permit, the cooperative must submit a new application prior to the December 31 deadline, and the new application must be subsequently approved by the Regional Administrator. Inshore cooperative fishing permits issued under this emergency interim rule are valid for the 2000 fishing year only.

Replacement Vessels

In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that will be eligible in the same manner as the original vessel after submission of an application for an AFA replacement vessel that is subsequently approved by NMFS. The AFA contains specific restrictions on replacement vessels that are set out in detail in the emergency interim rule regulatory text at § 679.4(l)(7). In this emergency rule, NMFS has made one change from the language of the statute. Section 208(g)(5) of the AFA states that a vessel may be used as a replacement vessel for an eligible AFA vessel if:

> the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel;

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing *more* than 3,000 shaft horsepower rather than engines incapable of producing *less* than 3,000 shaft horsepower because no catcher vessel operating in Alaska has engines incapable of producing *less* than 3,000 shaft horsepower. Any marine engine is capable of producing less than 3,000 shaft horsepower at less than full throttle or at idle. Therefore, in this emergency rule, the phrase ''incapable of producing more than 3,000 shaft horsepower'' is used to implement section 208(g)(5) of the AFA.

An existing AFA vessel may be designated as a replacement vessel for a lost AFA vessel. In the event that an existing AFA catcher vessel is designated as a replacement for a lost AFA catcher vessel, the catch histories of the two vessels may be merged for the purpose of making inshore cooperative allocations.

Official AFA Record and Appeals

In order to issue AFA permits, NMFS is compiling available information about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods. Information in the official AFA record will include vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit has the burden of proving correct any information submitted in an application that is inconsistent with the official record.

This rule also establishes an appeals process under which the owners of vessels and processors may appeal NMFS determinations about either AFA eligibility or inshore cooperative allocations. The appeals process for AFA permits and inshore cooperative allocations is based on the existing appeals process in place for the individual fishing quota and license limitation programs.

Changes to Definitions

Under this emergency interim rule, new definitions are added for ''ADF&G processor code,'' ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA inshore processor,'' ''AFA mothership,'' ''Designated primary processor,'' ''Official AFA record,'' ''Restricted AFA catcher/processor,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unrestricted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor'' to describe vessels and processors permitted to participate in the BSAI pollock fishery under the AFA. The definitions of ''AFA crab processor,'' and ''AFA inshore and/or mothership entity'' are added to implement the crab processing sideboard restrictions required under the AFA. The definition of ''Designated primary processor'' is added to describe the processor to which an inshore fishery cooperative will deliver at least 90 percent of its BSAI pollock. The definition for ''Official AFA record'' is added to describe the relevant catch histories and other data relevant to all potentially qualifying vessels and processors in the BSAI pollock fisheries. The definition for ''Stationary floating processor'' is added to define a vessel of the United States operating solely as a mothership in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while processing groundfish harvested in the GOA or BSAI.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act, AFA, and other applicable laws.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This emergency interim rule has been determined to be significant for the purposes of E.O. 12866.

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 5(b)(B). This action is necessary to implement the permit requirements of the AFA that authorize vessels and processors to fish for and process pollock, and to provide an

opportunity for inshore catcher vessels to form cooperatives for the 2000 fishing year. Inshore sector cooperatives will provide the inshore industry with the ability to more effectively meet the temporal and spatial dispersion objectives of NMFS's Steller sea lion conservation measures that are being published separately from this emergency rule. Delaying the effectiveness of this emergency interim rule to provide prior notice and opportunity for comment would effectively deny the inshore sector of the BSAI pollock industry the opportunity to form cooperatives prior to the start of the 2000 fishing year as provided for in the AFA. Therefore, this sector of the industry would lose a valuable method of meeting the temporal and spatial dispersion objectives of NMFS's Steller sea lion conservation measures. Delaying the start date of the 2000 pollock fishery to accommodate delayed permitting requirements would conflict with the investment-backed expectations of the regulated community, could disrupt the supply of seafood products to the United States and consequently, would be contrary to the public interest. Likewise, the need to avoid delaying the start of the pollock season constitutes good cause, pursuant to authority set forth at 5 U.S.C. 553(d)(3), not to delay the effective date of this rule for 30 days. In addition, the regulated community has been aware since the June 1999 Council meeting that these new requirements would be necessary and have had ample time to prepare for compliance, making the 30-day delay in effective date unnecessary.

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

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and that have been approved by OMB under control number 0648–0393. Public reporting burden for these collections of information is estimated to average as follows: For the operator to complete the AFA catcher vessel permit application is 2 hours; for an operator of an AFA mothership or manager of an inshore processor to complete the AFA mothership or inshore processor permit application is 2 hours; for a co-operative representative to complete the AFA inshore cooperative permit application is 2 hours; and for an operator to complete the AFA permit application for a replacement vessel is 30 minutes. The estimated response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

The President has directed Federal agencies to use plain language when communicating with the public, through regulations or otherwise. Therefore, NMFS seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 28, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: Title II of Division C, Pub. L. 105–277, 112 Stat. 2681; Sec. 3027, Pub. L. 106–31, 113 Stat. 57 (16 U.S.C. 773 *et seq.*, 1801 *et seq*, and 3631 *et seq.*).

2. In § 679.2, definitions of ''ADF&G processor code,'' ''AFA catcher/processor,'' ''AFA catcher vessel,'' ''AFA crab facility,'' ''AFA inshore or mothership entity,'' ''AFA inshore processor,'' ''AFA mothership,'' ''Designated primary processor,'' ''Official AFA record,'' ''Restricted AFA catcher/processor,'' ''Restricted AFA inshore processor,'' ''Stationary floating processor,'' ''Unrestricted AFA catcher/processor,'' and ''Unrestricted AFA inshore processor,'' are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

ADF&G processor code means State of Alaska Department of Fish & Game (ADF&G) Intent to operate processor license number (example: F12345).

AFA catcher/processor means a catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2).

AFA catcher vessel means a catcher vessel permitted to harvest BSAI pollock under § 679.4(l)(3).

AFA crab facility means a processing plant, catcher/processor, mothership, floating processor or any other operation that processes Bering Sea or Aleutian Island king or Tanner crab in which any individual, corporation or other entity that is part of an AFA entity either directly or indirectly owns a 10 percent or greater interest, or exercises 10 percent or greater control.

(1) *Indirect ownership standard.* For purposes of this definition, an indirect ownership interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the crab processing facility.

(2) *10 percent control standard.* Also for purposes of this definition, an entity is deemed to exercise 10 percent or greater control of a crab processing facility if the entity controls another entity that directly or indirectly owns a 10 percent or greater interest in the crab processing facility.

(i) The term ''control'' includes:

(A) Ownership of more than 50 percent of the entity;

(B) The right to direct the business of the entity;

(C) The right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or

(D) The right to direct the operation or manning of the crab processing facility.

(ii) The term ''control'' does not include the right to simply participate in the above actions.

AFA inshore or mothership entity means an entity that owns a mothership and/or inshore processor that processes pollock harvested in the directed BSAI pollock fishery.

(1) *10–percent ownership standard.* For purposes of this definition, all individuals, corporations or other entities that either directly or indirectly own a 10 percent or greater interest in the mothership and/or inshore processor, as the case may be, are considered as comprising a single AFA inshore or mothership entity. An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's percentage of direct, or indirect, interest in the mothership and/or inshore processor, as the case may be.

(2) *10 percent control standard.* Also for purposes of this definition, any individual, corporation or other entity that controls another entity that directly or indirectly owns a 10 percent or greater interest in the mothership and/or inshore processor, as the case may be, is considered a part of the same AFA inshore or mothership entity of which the controlled entity is a part.

(i) The term ''control'' includes:

(A) Ownership of more than 50 percent of the entity;

(B) The right to direct the business of the entity;

(C) The right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or

(D) The right to direct the operation or manning of the mothership and/or inshore processor, as the case may be.

(ii) The term ''control'' does not include the right to simply participate in the above actions.

AFA inshore processor means a shoreside processor or stationary floating processor permitted to process BSAI pollock under § 679.4(l)(4).

AFA mothership means a mothership permitted to process BSAI pollock under § 679.4(l)(5).

* * * * *

Designated primary processor means an AFA inshore processor that is designated by an inshore pollock cooperative as the AFA inshore processor to which the cooperative will deliver at least 90 percent of its annual BSAI pollock allocation during the year in which the AFA inshore cooperative fishing permit is in effect.

* * * * *

Official AFA record means the information prepared by the Regional Administrator about vessels and processors that were used to participate in the BSAI pollock fisheries during the qualifying periods specified in § 679.4(l). Information in the official AFA record includes vessel ownership information, documented harvests made from vessels during AFA qualifying periods, vessel characteristics, and documented amounts of pollock processed by pollock processors during AFA qualifying periods. The official AFA record is presumed to be correct for the purpose of determining eligibility for AFA permits. An applicant for an AFA permit will have the burden of proving correct any information submitted in an application that is inconsistent with the official record.

* * * * *

Restricted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(ii).

Restricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(B).

* * * * *

Stationary floating processor means a vessel of the United States operating as a processor in Alaska State waters that remains anchored or otherwise remains stationary in a single geographic location while receiving or processing groundfish harvested in the GOA or BSAI.

* * * * *

Unrestricted AFA catcher/processor means an AFA catcher/processor permitted to harvest BSAI pollock under § 679.4(l)(2)(i).

Unrestricted AFA inshore processor means an AFA inshore processor permitted to harvest pollock under § 679.4(l)(5)(i)(A).

* * * * *

3. In § 679.4, a new paragraph (l) is added to read as follows:

§ 679.4 Permits.

* * * * *

(l) *AFA permits* (applicable through June 27, 2000)—(1) *General*—(i) *Applicability.* In addition to any other permit and licensing requirements set out in this part, any vessel used to engage in directed fishing for a non-CDQ allocation of pollock in the BSAI and any shoreside processor, stationary floating processor, or mothership that receives pollock harvested in a non-CDQ directed pollock fishery in the BSAI must have a valid AFA permit onboard the vessel or at the facility location at all times while non-CDQ pollock is being harvested or processed. An AFA permit does not exempt a vessel operator, vessel, or processor from any other applicable permit or licensing requirement required under this part or in other state or Federal regulations.

(ii) *Duration.* Except as provided in paragraph (l)(6)(iv) of this section, and unless suspended or revoked, AFA vessel and processor permits are valid until December 31, 2004.

(iii) *Application for permit.* NMFS will issue AFA vessel and processor permits to the current owner(s) of a qualifying vessel or processor if the owner(s) submits to the Regional Administrator a completed AFA permit application that is subsequently approved.

(iv) *Amended permits.* AFA vessel and processor permits may not be used on or transferred to any vessel or processor that is not listed on the permit. However, AFA permits may be amended to reflect any change in the ownership of the vessel or processor. An application to amend an AFA permit must include the following:

(A) The original AFA permit to be amended, and

(B) A completed AFA permit application signed by the new vessel or processor owner.

(2) *AFA catcher/processor permits*—(i) *Unrestricted.* NMFS will issue to an owner of a catcher/processor an unrestricted AFA catcher/processor permit if the catcher/processor is one of the following (as listed in AFA paragraphs 208(e)(1) through (20)):

AMERICAN DYNASTY (USCG documentation number 951307);

KATIE ANN (USCG documentation number 518441);

AMERICAN TRIUMPH (USCG documentation number 646737);

NORTHERN EAGLE (USCG documentation number 506694);

NORTHERN HAWK (USCG documentation number 643771);

NORTHERN JAEGER (USCG documentation number 521069);

OCEAN ROVER (USCG documentation number 552100);

ALASKA OCEAN (USCG documentation number 637856);

ENDURANCE (USCG documentation number 592206);

AMERICAN ENTERPRISE (USCG documentation number 594803);

ISLAND ENTERPRISE (USCG documentation number 610290);

KODIAK ENTERPRISE (USCG documentation number 579450);

SEATTLE ENTERPRISE (USCG documentation number 904767);

US ENTERPRISE (USCG documentation number 921112);

ARCTIC STORM (USCG documentation number 903511);

ARCTIC FJORD (USCG documentation number 940866);

NORTHERN GLACIER (USCG documentation number 663457);

PACIFIC GLACIER (USCG documentation number 933627);

HIGHLAND LIGHT (USCG documentation number 577044);

STARBOUND (USCG documentation number 944658).

(ii) *Restricted.* NMFS will issue to an owner of a catcher/processor a restricted AFA catcher/processor permit if the catcher/processor is not listed in § 679.4(l)(2)(i) and is determined by the Regional Administrator to have harvested more than 2,000 mt of pollock in the 1997 BSAI directed pollock fishery.

(3) *AFA catcher vessel permits.* NMFS will issue to an owner of a catcher vessel an AFA catcher vessel permit containing sector endorsements and sideboard restrictions upon receipt and approval of a completed application for an AFA catcher vessel permit.

(i) *Qualifying criteria*—(A) *Catcher vessels delivering to catcher/processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to a catcher/processor if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(b)(1) through (7) of the AFA):

AMERICAN CHALLENGER (USCG documentation number 633219);

FORUM STAR (USCG documentation number 925863);

MUIR MILACH (USCG documentation number 611524);

NEAHKAHNIE (USCG documentation number 599534);

OCEAN HARVESTER (USCG documentation number 549892);

SEA STORM (USCG documentation number 628959);

TRACY ANNE (USCG documentation number 904859); or

(*2*) Is not listed in § 679.4(l)(3)(i)(A)(*1*) and is determined by the Regional Administrator to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component.

(B) *Catcher vessels delivering to AFA motherships.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA mothership if the catcher vessel:

(*1*) Is one of the following (as listed in paragraphs 208(c)(1) through (19) and subsection 211(e) of the AFA):

ALEUTIAN CHALLENGER (USCG documentation number 603820);

ALYESKA (USCG documentation number 560237);

AMBER DAWN (USCG documentation number 529425);

AMERICAN BEAUTY (USCG documentation number 613847);

CALIFORNIA HORIZON (USCG documentation number 590758);

MAR–GUN (USCG documentation number 525608);

MARGARET LYN (USCG documentation number 615563);

MARK I (USCG documentation number 509552);

MISTY DAWN (USCG documentation number 926647);

NORDIC FURY (USCG documentation number 542651);

OCEAN LEADER (USCG documentation number 561518);

OCEANIC (USCG documentation number 602279);

PACIFIC ALLIANCE (USCG documentation number 612084);

PACIFIC CHALLENGER (USCG documentation number 518937);

PACIFIC FURY (USCG documentation number 561934);

PAPADO II (USCG documentation number 536161);

TRAVELER (USCG documentation number 929356);

VESTERAALEN (USCG documentation number 611642);

WESTERN DAWN (USCG documentation number 524423);

LISA MARIE (USCG documentation number 1038717); or

(*2*) Is not listed in § 679.4(l)(3)(i)(B)(*1*) and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A).

(C) *Catcher vessels delivering to AFA inshore processors.* NMFS will endorse an AFA catcher vessel permit to authorize directed fishing for pollock for delivery to an AFA inshore processor if the catcher vessel:

(*1*) Is the LISA MARIE (USCG documentation number 1038717); or

(*2*) Is not eligible for an endorsement to deliver pollock to catcher/processors under § 679.4(l)(3)(i)(A), and:

(*i*) Is determined by the Regional Administrator to have delivered at least 250 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(*ii*) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998.

(ii) *Application for AFA catcher vessel permit.* A completed application for an AFA catcher vessel permit must contain:

(A) *Vessel information.* The vessel name, ADF&G registration number, USCG documentation number, vessel telephone number (if any), gross tons, shaft horsepower, and registered length (in feet);

(B) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(C) *Vessel AFA qualification information.* AFA catcher vessel permit endorsement(s) requested; and

(D) *Vessel crab activity information required for crab sideboard endorsements.* The owner of an AFA catcher vessel wishing to participate in any BSAI king or Tanner crab fishery must apply for a crab sideboard endorsement authorizing the catcher vessel to retain that crab species. An AFA catcher vessel permit may be endorsed for a crab species if the owner requests a crab sideboard endorsement, provides supporting documentation that the catcher vessel made the required legal landing(s) of a crab species, and the Regional Administrator verifies the legal landing(s) according to the following criteria:

(*1*) *Bristol Bay Red King Crab (BBRKC)*: A legal landing of any BSAI king or Tanner crab species in 1996, 1997, or on or before February 7, 1998. A BBRKC sideboard endorsement also authorizes a vessel to retain Bairdi Tanner crab harvested during the duration of a BBRKC opening if the vessel is otherwise authorized to retain Bairdi Tanner crab while fishing for BBRKC under state and Federal regulations.

(*2*) *St. Matthew Island blue king crab*: A legal landing of St. Matthew Island blue king crab in that fishery in 1995, 1996, or 1997.

(*3*) *Pribilof Island red and blue king crab*: A legal landing of Pribilof Island blue or red king crab in that fishery in 1995, 1996, or 1997.

(*4*) *Aleutian Islands (Adak) brown king crab*: A legal landing of Aleutian Islands brown king crab during in each of the 1997/1998 and 1998/1999 fishing seasons.

(*5*) *Aleutian Islands (Adak) red king crab*: A legal landing of Aleutian Islands red king crab in each of the 1995/1996 and 1998/1999 fishing seasons.

(*6*) *Opilio Tanner crab*: A legal landing of *Chionoecetes*(*C.*) *opilio* Tanner crab in each of 4 or more years from 1988 to 1997.

(*7*) *Bairdi Tanner crab*: A legal landing of *C. bairdi* Tanner crab in 1995 or 1996.

(E) *Vessel exemptions from AFA catcher vessel groundfish sideboard directed fishing closures.* An AFA catcher vessel permit may contain exemptions from certain groundfish sideboard directed fishing closures. If a vessel owner is requesting an exemption from groundfish sideboard-directed closures, the application must provide supporting documentation that the catcher vessel qualifies for the exemption based on the criteria set out below. The Regional Administrator will review the vessel's catch history according to the following criteria:

(*1*) *BSAI Pacific cod.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the BSAI Pacific cod fishery, the catcher vessel must be less than 125 ft LOA,

have harvested a combined total of less than 5,100 mt of BSAI pollock, and have made 30 or more legal landings of Pacific cod in the BSAI directed fishery for Pacific cod during the combined years 1995, 1996, and 1997.

(*2*) *GOA groundfish species.* For a catcher vessel to qualify for an exemption from AFA catcher vessel sideboards in the GOA groundfish fisheries, the catcher vessel must be less than 125 ft LOA, have harvested a combined total of less than 5,100 mt of BSAI pollock and made 40 or more legal landings of GOA groundfish during the combined years 1995, 1996, and 1997.

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and stamp and signature of a notary public.

(4) *AFA mothership permits.* NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779).

(i) *Cooperative processing endorsement.* The owner of an AFA mothership who wishes to process pollock harvested by a fishery cooperative formed under § 679.60 must apply for and receive a cooperative processing endorsement on the vessel's AFA mothership permit.

(ii) *Application for AFA mothership permit.* A completed application for an AFA mothership permit must contain:

(A) *Type of permit requested.* Type of processor and whether requesting an AFA co-operative endorsement.

(B) *Mothership information.* The mothership name, ADF&G processor code, USCG documentation number, Federal fisheries permit number, gross tons, shaft horsepower, and registered length (in feet).

(C) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(D) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA mothership application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each of each AFA crab facility that is owned or controlled by the AFA mothership entity that owns or controls the AFA mothership; and

(E) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(5) *AFA inshore processor permits.* NMFS will issue to an owner of a shoreside processor or stationary floating processor an AFA inshore processor permit upon receipt and approval of a completed application.

(i) *Qualifying criteria*—(A) *Unrestricted processors.* NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) *Restricted processors.* NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *Cooperative processing endorsement.* The owner of an AFA inshore processor who wishes to process pollock harvested by a fishery cooperative formed under § 679.61 must apply for and receive a cooperative processing endorsement on the AFA inshore processor permit.

(iii) *Single geographic location requirement.* An AFA inshore processor permit authorizes the processing of pollock harvested in the BSAI directed pollock fishery in only a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) *Shoreside processors.* The physical location at which the land-based shoreside processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year;

(B) *Stationary floating processors.* A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed BSAI pollock harvested in the BSAI directed pollock fishery during a fishing year.

(iv) *Application for permit.* A completed application for an AFA inshore processor permit must contain:

(A) *Type of permit requested.* Type of processor, whether requesting an AFA cooperative endorsement, and amount of BSAI pollock processed in 1996 and 1997;

(B) *Stationary floating processor information.* The vessel name, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business E-mail address used onboard the vessel.

(C) *Shoreside processor information.* The processor name, Federal processor permit number, ADF&G processor code, business street address; business telephone and FAX numbers, and business e-mail address.

(D) *Owner information.* Owner name(s), tax ID number(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(E) *AFA crab facility ownership information.* If the applicant is applying for a cooperative pollock processing endorsement, the AFA inshore processor application must list the name, type of facility, ADF&G processor code, and percentage of ownership or control of each of each AFA crab facility that is owned or controlled by the AFA inshore processor entity that owns or controls the AFA inshore processor; and

(F) *Certification of notary and applicant.* Owner signature(s), date of signature, printed name(s), and notary stamp and signature of a notary public.

(6) *Inshore cooperative fishing permits*—(i) *General.* NMFS will issue to an inshore catcher vessel cooperative formed under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) *Application for permit.* A completed application for an inshore cooperative fishing permit must contain the following information:

(A) *Cooperative contact information.* Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) *Designated cooperative processor.* The name and physical location of AFA Inshore Processor that is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BSAI pollock catch. If the processor is a stationary floating processor, the single geographic location (latitude and

longitude) at which the processor will process BSAI pollock under the AFA; and Federal processor permit number of the AFA inshore processor;

(C) *Cooperative contract information.* A copy of the cooperative contract and a written certification that:

(*1*) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels. For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if:

(*i*) it delivered more pollock harvested in the BSAI inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other shoreside processor or stationary floating processor during the year prior to the year in which the cooperative fishing permit will be in effect; and

(*ii*) the owner(s) of the catcher vessel in question has submitted a completed application for an AFA catcher vessel permit to the Regional Administrator that was received on or before December 31, 1999 and which is not subsequently denied.

(*2*) The cooperative contract requires that the cooperative deliver at least 90 percent of its BSAI pollock catch to its designated AFA processor; and

(*3*) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) *Business review letter.* A copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice, and any response to such request;

(E) *Vessel information.* For each cooperative catcher vessel member: Vessel name, ADF&G registration number, USCG documentation number, AFA permit number; and

(F) *Certification of notary and applicant.* Signature and printed name of cooperative representative, date of signature, and notary stamp or seal of a notary public.

(iii) *Duration of cooperative fishing permits.* Inshore cooperative fishing permits are valid for 1 calendar year.

(iv) *Add or subtract vessels to a cooperative fishing permit.* The cooperative representative must submit a new application to add or subtract a catcher vessel to or from an inshore cooperative fishing permit to the Regional Administrator prior to the application deadline. Upon approval by the Regional Administrator, NMFS will issue an amended cooperative fishing permit.

(v) *Application deadline.* An inshore cooperative fishing permit application and any subsequent contract amendments that add or subtract vessels must be received by the Regional Administrator by December 31 prior to the year in which the inshore cooperative fishing permit will be in effect. Inshore cooperative fishing permit applications or amendments to inshore fishing cooperative permits received after December 31 will not be accepted by the Regional Administrator for the subsequent fishing year.

(7) *Replacement vessels.* (i) In the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may replace such vessel with a replacement vessel. The replacement vessel will be eligible in the same manner as the original vessel after submission and approval of an application for an AFA replacement vessel provided that:

(A) Such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(B) The replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(C) The USCG certificate of documentation with fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(D) If the eligible vessel is greater than 165 ft (50.3 meters (m)) in registered length, or more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(E) If the eligible vessel is less than 165 ft (50.3 m) in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing more than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(F) If the replacement vessel is already an AFA catcher vessel, the inshore cooperative catch history of both vessels may be merged in the replacement vessel for the purpose of determining inshore cooperative allocations except that a catcher vessel with an endorsement to deliver pollock to AFA catcher/processors may not be simultaneously endorsed to deliver pollock to AFA motherships or AFA inshore processors.

(ii) *Application for permit.* A completed application for an AFA permit for replacement vessel must contain:

(A) *Identification of lost AFA eligible vessel.*

(*1*) Name, ADF&G vessel registration number, USCG documentation number, AFA permit number, gross tons, shaft horsepower, and registered length from USCG documentation of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), telephone number(s), FAX number(s), and e-mail address(es) of owner(s);

(*3*) Last year in which this vessel harvested or processed pollock in a BSAI directed pollock fishery; and

(*4*) Description of how the vessel was lost or destroyed. Attach a USCG Form 2692 or insurance papers to verify the claim.

(B) *Identification of replacement vessel.*

(*1*) Name, ADF&G vessel registration number, USCG documentation number, gross tons, shaft horsepower, registered length, net tons, and length overall (in feet) from USCG documentation, and Federal Fisheries Permit number of the vessel;

(*2*) Name(s), tax ID number(s), business mailing address(es), business telephone number(s), business FAX number(s), and business e-mail address(es) of the owner(s);

(*3*) YES or NO indication of whether the vessel was built in the United States; and

(*4*) YES or NO indication of whether the vessel has ever been rebuilt, and if so whether it was rebuilt in the United States.

(C) *Certification of applicant and notary.* Signature(s) and printed name(s) of owner(s) and date of signature; signature, notary stamp or seal of notary public, and date notary commission expires.

(8) *Application evaluations and appeals*—(i) *Initial evaluation.* The Regional Administrator will evaluate an application for an AFA fishing or processing permit submitted in accordance with this paragraph (1) and compare all claims in the application with the information in the official AFA record. Claims in the application that are consistent with information in the official AFA record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless supported by evidence, will not be

accepted. An applicant who submits inconsistent claims or fails to submit the information specified in the application for an AFA permit will be provided a 60-day evidentiary period to submit the specified information, submit evidence to verify the applicant's inconsistent claims, or submit a revised application with claims consistent with information in the official AFA record. An applicant who submits claims that are inconsistent with information in the official AFA record has the burden of proving that the submitted claims are correct.

(ii) *Additional information and evidence*. The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official AFA record will be amended and the information will be used in determining whether the applicant is eligible for an AFA permit. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination that the applicant did not meet the burden of proof to change information in the official AFA record.

(iii) *Sixty-day evidentiary period*. The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official AFA record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit required information will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application received after the 60-day evidentiary period specified in the letter has expired will not be considered for the purposes of the initial administrative determination.

(iv) *Initial administrative determinations (IAD)*. The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official AFA record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD also will indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will receive an interim AFA permit that authorizes a person to participate in an AFA pollock fishery, and will have the specific endorsements and designations based on the claims in his or her application. An interim AFA permit will expire upon final agency action.

(v) *Effect of cooperative allocation appeals*. An AFA inshore cooperative may appeal the pollock quota share issued to the cooperative under § 679.61; however, final agency action on the appeal must occur prior to December 15 for the results of the appeal to take effect during the subsequent fishing year.

[FR Doc. 99–34065 Filed 12–30–99; 9:50 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 3
Wednesday, January 5, 2000

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

9 CFR Part 130

[Docket No. 98–045–1]

Veterinary Services User Fees; Pet Food Facility Inspection and Approval Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend existing user fees for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. Existing user fees require such facilities to pay user fees based on hourly rates for inspections and approval. We are proposing to replace the hourly rates for this specific service with flat rate user fees that would cover the cost of all inspections required for annual approval. We are taking this action in order to make it easier for users to know their costs in advance, while still ensuring we cover our costs.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by March 6, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–045–1, 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. 98–045–1.

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: For information concerning program operations for Veterinary Services, contact Ms. Louise Lothery, Administrative Officer, Management Support Staff, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development of the proposed user fee, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Service Enhancement Unit, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

Facilities that process or manufacture pet food ingredients or products for export, including manufacturing, rendering, blending, digest, and spraying and drying facilities, are required by the European Union and other foreign countries to be inspected and approved by the Animal and Plant Health Inspection Service (APHIS).

Rendering facilities process slaughter byproducts, animals unfit for human consumption, and meat scraps by cooking them down into various types of protein meal that are used as ingredients in pet foods. Blending facilities take different kinds of protein meal and mix them according to manufacturers' specifications. Digest facilities produce enzymatic meals in powdered or liquid form for use as pet food flavor enhancers. Spraying and drying facilities produce powdered blood meal, which is also used as a flavor enhancer. Manufacturing facilities add enzymatic digests and/or blood meal to blended protein meal to produce the finished pet food, which is then packaged for sale in the United States or for export to another country.

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import-and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.8 lists miscellaneous flat rate user fees. Section 130.21 lists the hourly rate user fees charged for APHIS' export services, which include inspecting and approving pet food facilities under 9 CFR part 156, ''Voluntary Inspection and Certification Service.''

We are proposing to amend 9 CFR part 130 to establish flat rate annual user fees to cover the cost of APHIS' inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. Under this proposal, pet food manufacturing, rendering, blending, and digest facilities would be subject to a user fee of $404.75 for initial approval and a user fee of $289.00 for annual renewal of APHIS approval. Pet food spraying and drying facilities would be subject to a user fee of $275.00 for initial approval and $162.50 for annual renewal of APHIS approval. The flat rate user fees would cover all costs of inspection, including airfare and/or ground travel, lodging, inspection, per diem, and miscellaneous travel expenses.

We are proposing this action based on a requests from pet food industry representatives that we modify our user fees to make it easier for them to know in advance what their costs will be. We have determined that the most effective way to do this is to establish a flat rate annual user fee, which would effectively eliminate any variation in cost that could otherwise result in charging hourly rates for inspections.

We calculated the proposed flat rate annual user fees to reflect the average annual cost to APHIS of providing these services. The average annual cost includes the time to provide the service and travel time, which are both currently billed at an hourly rate. The total charge to each facility would not be significantly different from what each facility currently pays.

We are also proposing to make nonsubstantive changes to 9 CFR part 130, including moving all of the flat rate user fees contained in § 130.8 that are charged to import/export facilities or establishments into a new § 130.11, which would also include the flat rate fees that we are proposing in this document. The following table shows where the fees for each service currently listed in the regulations would be located in part 130 if this proposal is adopted.

Service	Current section	Proposed section
Germ plasm being exported	130.8	130.8
Germ plasm being imported	130.8	130.8
Import compliance assistance	130.8	130.8
Inspection for approval of slaughter establishments	130.8	130.11
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96	130.8	130.11
Processing VS form 16–3, ''Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors	130.8	130.8
Release from export agricultural hold	130.8	130.8
Embryo collection center inspection and approval	130.8	130.11
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities	N/A	130.11
Inspection for approval of pet food spraying and drying facilities	N/A	130.11

We are also proposing to amend § 130.1 to add the following definitions for ''pet food blending facility,'' ''pet food digest facility,'' ''pet food manufacturing facility,'' ''pet food rendering facility,'' and ''pet food spraying and drying facility.''

Pet food blending facility: A facility that blends animal or plant protein meal for use in pet food.

Pet food digest facility: A facility that produces enzymatic protein meals in powdered or liquid form for use as pet food flavor enhancers.

Pet food manufacturing facility: A facility that produces, processes, or packages pet food for sale in the United States or for export to another country.

Pet food rendering facility: A facility that processes slaughter byproducts, animals unfit for human consumption, and meat scraps by cooking them down into protein meal for use as ingredients in pet food.

Pet food spray/dry facility: A facility that produces powdered blood meal for use as a flavor enhancer in pet food.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Currently, we charge hourly rate user fees for inspection and approval of manufacturing, rendering, blending, digest, and spraying and drying facilities. We are proposing to amend the regulations by removing these hourly rate user fees for inspection and approval and replacing them with two sets of flat rate annual user fees: one for the inspection and approval of pet food manufacturing, rendering, blending, and digest facilities, and one for the inspection and approval of pet food spraying and drying facilities.

We arrived at the flat rate annual user fees that we are proposing by calculating the average number of hours required for an APHIS inspector to complete an inspection (including travel time), multiplying by the average number of inspections performed during a year (two per center), and adding the average direct labor involved and proportional shares of support costs, overhead, and departmental charges.

The resulting proposed flat rate user fees for manufacturing, rendering, blending, or digest facilities are $404.75 for initial inspection and approval and $289.00 for renewal of approval; for spraying and drying facilities, they are $275.00 for initial inspection and approval and $162.50 for renewal of approval. These fees would not be significantly different from the amount customers have paid yearly in the past at hourly rates for initial inspection and approval.

The table below shows the difference between the average cost for initial and renewed inspection and approval for each of the five categories of pet food facilities using the current hourly rate user fees and the cost under the proposed flat rate user fees. Change in cost of inspection and approval under proposed flat rate user fees

CHANGE IN COST OF INSPECTION AND APPROVAL UNDER PROPOSED FLAT RATE USER FEES

Type of pet food facility	Average cost to facilities at current hourly rate user fees		Cost to facilities under proposed flat rate user fees		Change in user fee collections	
	Initial approval	Renewed approval	Initial approval	Renewed approval	Initial approval	Renewed approval
Manufacturing	$415.00	$353.25	$404.75	$289.00	−$10.25	−$64.25
Rendering	376.75	272.75	404.75	289.00	28.00	16.25
Blending	436.25	316.00	404.75	289.00	−31.50	27.00
Digest	390.75	213.75	404.75	289.00	14.00	76.00
Spraying/Drying	275.00	162.50	275.00	162.50	0	0

As shown in the table, the user fees collected for the inspection and approval of pet food manufacturing and blending industries are expected to decrease overall. Pet food spraying and drying facilities would not be affected by this proposed rule. For the inspection and approval of the

rendering and digest facilities, user fee collections are expected to increase.

However, as shown in the table below, the total amount of fees collected is not expected to change significantly.

COMPARISON OF TOTAL HOURLY (A) AND FLAT (B) RATE USER FEE COLLECTIONS, BASED ON THE NUMBER OF APPROVALS (C) ISSUED IN 1997 FOR MANUFACTURING, RENDERING, BLENDING, AND DIGEST PET FOOD FACILITIES

	A	B	C	(A*C)	(B*C)
Manufacturing facilities	[(415+353.25)/2]=$384.13	[(404.75+289)/2]=$346.88	88	$33,803.00	$30,525.00
Rendering facilities	[(376.75+272.75)/2]=$324.75	[(404.75+289)/2]=$346.88	148	$48,063.00	$51,337.50
Blending facilities	[(436.25+316)/2]=$376.13	[(404.75+289)/2]=$346.88	7	$2,428.13	$2,428.13
Digest facilities	[(390.75+213.75)/2]=$302.25	[(404.75+289)/2]=$346.88	12	$3,627.00	$4,162.50
Total collections using the two different methods (A and B).				$87,921.13	$88,453.13

In the table above, columns ''A'' and ''B'' depict the average charges by APHIS for an initial inspection and a license renewal, using the current hourly rate average user fee and using the proposed flat rate user fee. Column ''C'' shows the number of facilities that were approved by APHIS in 1997 within each of the pet food industries.

The last two columns (''A*C'') and (''B*C'') represent the dollar amounts collected by APHIS using the two different methods. Column ''A*C'' represents the dollar amount collected by APHIS when it uses an hourly rate user fee. Column ''B*C'' represents the expected dollar amount if APHIS uses the proposed flat rate user fee. Based on the difference between the total collections under the two methods, the proposed flat rate fee would result in a 0.6 percent increase in total collections.

Effects on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic effects of rules on small business, organizations, and governmental jurisdictions. The entities that would be affected by this proposal are pet food manufacturing, rendering, blending, digest, and spraying and drying facilities. According to Small Business Administration data, there are 1,100 firms in the United States that produce cat and dog food or ingredients that go into pet food, 1,030 (over 93 percent) of which would be considered small (employing fewer than 500 people). However, as shown above, the economic effects of this proposal on those entities, whether small or large, would be insignificant.

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 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.1, definitions for ''pet food blending facility,'' ''pet food digest facility,'' ''pet food manufacturing facility,'' ''pet food rendering facility,'' and ''pet food spraying and drying facility'' would be added in alphabetical order to read as follows:

§ 130.1 Definitions.

* * * * *

Pet food blending facility. A facility that blends animal or plant protein meal for use in pet food.

Pet food digest facility. A facility that produces enzymatic protein meals in powdered or liquid form for use as pet food flavor enhancers.

Pet food manufacturing facility. A facility that produces, processes, or packages pet food for sale in the United States or for export to another country.

Pet food rendering facility. A facility that processes slaughter byproducts, animals unfit for human consumption, and meat scraps by cooking them down into protein meal for use as ingredients in pet food.

Pet food spraying and drying facility. A facility that produces powdered blood meal for use as a flavor enhancer in pet food.

* * * * *

3. In § 130.8, paragraph (a), the table would be revised to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee
Germ plasm being exported: [1]	
Embryo:	
(up to 5 donor pairs)	$54.75 per certificate.

Service	User fee
(each additional group of donor pairs, up to 5 pairs per group, on the same certificate)	$24.75 per group of donor pairs.
Semen	$33.50 per certificate.
Germ plasm being imported: [2]	
Embryo	$39.50 per load.
Semen	$39.50 per load.
Import compliance assistance:	
Simple (2 hours or less)	$51.25 per release.
Complicated (more than 2 hours)	$131.75 per release.
Processing VS form 16–3, ''Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors'':	
For permit to import fetal bovine serum when facility inspection is required	$208.50 per application.
For all other permits	$27.50 per application.
Amended application	$11.50 per amended application.
Application renewal	$15.00 per application.
Release from export agricultural hold:	
Simple (2 hours or less).	51.25 per release.
Complicated (more than 2 hours)	$131.75 per release.

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the applicable hourly rate user fee would apply.

[2] For inspection of empty containers being imported into the United States, the applicable hourly rate user fee would apply, unless a user fee has been assessed under 7 CFR 354.3.

* * * * *

4. A new § 130.11, would read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a) User fees for the inspection of various import and export facilities and establishments are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Service	User fee
Embryo collection center inspection and approval	$278.50 for all inspections required during the year for facility approval.
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities:	
Initial approval	$404.75 for all inspections required during the year.
Renewal	$289.00 for all inspections required during the year.
Inspection for approval of pet food spraying and drying facilities:	
Initial approval	$275.00 for all inspections required during the year.
Renewal	$162.50 for all inspections required during the year.
Inspection for approval of slaughter establishment:	
Initial approval	$246.50 for all inspections required during the year.
Renewal	$213.50 for all inspections required during the year.
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Initial approval	$262.75 for first year of 3-year approval (for all inspections required during the year).
Renewal	$152.00 per year for second and third years of 3-year approval (for all inspections required during the year).

* * * * *

Done in Washington, DC, this 21st day of December 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–218 Filed 1–4–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–51–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require a one-time inspection to detect corrosion and scratches on the bearing housing surfaces of the support assembly on the main landing gear (MLG), and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent corrosion in the inboard and outboard bearing housings of the MLG support assembly, which could result in fatigue cracks in the support assembly and lead to failure of the MLG.

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–51–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 Saab Aircraft AB, SAAB Aircraft .. Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–51–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–51–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that, during replacement of landing gear support assembly bearings, pitting corrosion has been found in the outboard and inboard bearing housings. The corrosion is believed to be caused by intrusion of moisture between the bearing and its housing surface. Such corrosion, if not corrected, could result in fatigue cracks in the support assembly and lead to failure of the main landing gear (MLG).

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–57–036, dated October 20, 1999, which describes a one-time visual inspection to detect corrosion and scratches on the bearing housing surfaces of the support assembly on the MLG. The service bulletin also describes procedures for corrosion removal, an eddy current inspection, and repair if corrosion or scratches are found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive No. 1–146, dated October 20, 1999, in order to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden 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 LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the LFV.

Cost Impact

The FAA estimates that 291 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $34,920, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 99–NM–51–AD.

Applicability: Model SAAB SF340A, serial numbers 004 through 159 inclusive; and SAAB 340B series airplanes, serial numbers 160 through 444 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 (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 corrosion in the inboard and outboard bearing housings of the support assembly of the main landing gear (MLG), which could result in fatigue cracks in the support assembly and lead to failure of the MLG, accomplish the following:

(a) At the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD: Perform a one-time general visual inspection of the eight bearing housing surfaces of the MLG to detect corrosion or scratches, in accordance with Saab Service Bulletin 340–57–036, dated October 20, 1999.

(1) For airplanes with 32,000 or more total flight cycles as of the effective date of this AD, the inspection is to be performed within 4,000 flight cycles after the effective date of this AD.

(2) For airplanes with 24,000 or more and fewer than 32,000 total flight cycles as of the effective date of this AD, the inspection is to be performed within 6,000 flight cycles after the effective date of this AD.

(3) For airplanes with 12,000 or more and fewer than 24,000 total flight cycles as of the effective date of this AD, the inspection is to be performed prior to the accumulation of 24,000 total flight cycles, or within 6,000 flight cycles after the effective date of this AD, whichever occurs later.

(4) For airplanes with fewer than 12,000 total flight cycles as of the effective date of this AD, the inspection is to be performed prior to the accumulation of 12,000 total flight cycles, or within 6,000 flight cycles after the effective date of this AD, whichever occurs later.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(b) Except as provided by paragraph (c) of this AD: If, during the inspection required by paragraph (a) of this AD, any corrosion or scratch is detected that is within the limits specified in Saab Service Bulletin 340–57–036, dated October 20, 1999, prior to further flight, perform corrective actions (including rework, an eddy current inspection, and repair) in accordance with steps 2.B. and 2.C. of the Accomplishment Instructions of the service bulletin.

(c) If, during any inspection required by this AD, a discrepancy is detected for which the service bulletin specifies to contact Saab for appropriate action [including any crack or any corrosion or scratch that exceeds 1.1 mm (0.043 in) after applicable rework has been performed as required by paragraph (b) of this AD]: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate; or the Luftfartsverket (LFV) (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

(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 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

(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.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive No. 1–146, dated October 20, 1999.

Issued in Renton, Washington, on December 29, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–138 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–82–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus A300–600 and A310 series airplanes. This proposal would require repetitive high frequency eddy current (HFEC) inspections to detect cracking of the inner flange of fuselage frame FR73A, between beams 5 and 7, and corrective actions, if necessary. 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 fatigue cracking of the inner flange of fuselage frame FR73A, which could result in reduced structural integrity of the fuselage.

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–82–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 99–NM–82–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–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 and A310 series airplanes on which a certain fuselage frame FR73A modification has been accomplished. The DGAC advises that, during the A330/A340 full-scale fatigue test, a crack was found on the right-hand side of fuselage frame FR73A between beams 5 and 6. The crack ran the full width of the inner flange and extended 1.3 inches into the frame web. Such cracking, if not detected and corrected, could result in reduced structural integrity of the fuselage.

Identical Structures

Frame FR73A of Airbus Model A330/A340 series airplanes is identical to frame FR73A of certain Model A300–600 and A310 series airplanes. Therefore, Model A300–600 and A310 series airplanes are also subject to the unsafe condition identified by this proposed AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A310–53–2107 (for Model A310 series airplanes) and A300–53–6116 (for Model A300–600 series airplanes), both Revision 01, both dated July 2, 1999. These service bulletins describe procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracking of the inner flange (left and right sides) of fuselage frame FR73A, between beams 5 and 7; and corrective actions, if necessary. The corrective actions involve rework of frame FR73A or replacement with a new frame section between beams 5 and 7. However, accomplishment of these actions would not eliminate the need for repetitive HFEC inspections. Furthermore, the service bulletins recommend that operators report all findings (both positive and negative) to Airbus.

The DGAC classified the service bulletins as mandatory and issued French airworthiness directive 1999–013–276(B), dated January 13, 1999, 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 require accomplishment of the actions specified in Airbus Service Bulletins A310–53–2107 and A300–53–6116, described previously, except as discussed below.

The proposed AD also would require that operators report results of inspection findings (both positive and negative) directly to Airbus.

Differences Between Proposed Rule and Relevant Service Information

Operators should also note that, although both 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 or the DGAC (or its delegated agent).

Interim Action

This is considered to be interim action. The inspection reports that would be required by this proposed AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to fully address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 198 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,880, or $60 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 99–NM–82–AD.

Applicability: Model A300–600 and A310 series airplanes, certificated in any category, on which Airbus Modification 6925 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 detect and correct fatigue cracking of the inner flange of fuselage frame FR73A, which could result in reduced structural integrity of the fuselage, accomplish the following:

HFEC Inspection

(a) Prior to the accumulation of 18,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current (HFEC) inspection to detect cracking of the inner flange (left and right sides) of the rear fuselage frame FR73A, between beams 5 and 7, in accordance with Airbus Service Bulletin A310–53–2107, Revision 01 (for Model A310 series airplanes), or A300–53–6116, Revision 01 (for Model A300–600 series airplanes); both dated July 2, 1999; as applicable.

(1) If no crack is detected, repeat the HFEC inspection thereafter at intervals not to exceed 5,000 flight cycles.

(2) For any crack that is less than or equal to 0.20 inch (5.0 millimeters) in length: Prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Rework the frame in accordance with the applicable service bulletin. Within 3,000 flight cycles after accomplishing the rework, replace the fuselage frame FR73A between beams 5 and 7 with a new frame section in accordance with the applicable service bulletin. Or

(ii) Replace the fuselage frame FR73A between beams 5 and 7 with a new frame section, in accordance with the applicable service bulletin.

(3) For any crack greater than 0.20 inch (5.0 millimeters) in length: Prior to further flight, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD.

(i) Repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). Or

(ii) Replace the fuselage frame FR73A between beams 5 and 7 with a new section, in accordance with the applicable service bulletin.

(b) Within 18,000 flight cycles after any replacement accomplished in accordance with paragraph (a)(2)(i), (a)(2)(ii), or (a)(3)(ii) of this AD: Repeat the inspection specified by paragraph (a) of this AD. Thereafter, repeat the inspection at intervals not to exceed 5,000 flight cycles.

(c) Submit a report of inspection findings (both positive and negative) of any inspection required by this AD to Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, the age of the airplane since entry into service, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

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.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–013–276(B), dated January 13, 1999.

Issued in Renton, Washington, on December 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–137 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235–100 and CN–235–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model CN–235–100 and CN–235–200 series airplanes. This proposal would require replacement of existing anti-icing distributor valves with new, improved valves. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent ice accumulation on the wings or tail of the airplane, which could result in reduced controllability of the airplane.

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–261–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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–261–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–261–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 26, 1989, a British Aerospace Jetstream Model BA–3101 series airplane impacted the ground approximately 400 feet short of the runway while executing an instrument landing system (ILS) approach. The accident occurred at the Tri-Cities Airport, Pasco, Washington. The National Transportation Safety Board (NTSB) determined that the probable cause of the accident was the flightcrew's decision to continue an unstabilized ILS approach that led to a stall, most likely of the horizontal stabilizer, and loss of control at low altitude. Contributing to the stall and loss of control was the accumulation of leading edge ice, which degraded the aerodynamic performance of the airplane.

One result of the NTSB investigation was the determination that the flight deck wing de-icing light illuminated at a lower pressure than the pressure required to fully inflate the de-icing boots. The premature illumination of the wing de-icing light was due to a failure within the wing de-icing boot system, which allowed sufficient air pressure to give the appearance of normal operation based on the de-icing light, without actually inflating the boots sufficiently to remove ice.

Based on an NTSB Safety Recommendation, the FAA reviewed the pneumatic de-icing boot system designs for airplanes operated under parts 121 and 135 of the Federal Aviation Regulations to ensure that the pneumatic pressure threshold at which each de-icing boot indication light is designed to illuminate is sufficient pressure for effective operation of the pneumatic de-icing boots. The FAA has determined that the existing design of the flight deck pneumatic de-icing boot pressure indicator switch on CASA Model CN–235–100 and CN–235–200 series airplanes may allow the flight deck indicator light to illuminate at a lower pressure than the pressure required to fully inflate the de-icing boots [15 pounds per square inch gage (psig)]. Illumination of the light at a lower pressure would indicate to the flightcrew that the pneumatic ice boots are operating normally, though the boots may not be sufficiently inflated to shed ice. This condition, if not corrected, could result in ice accumulation on the wings or tail of the airplane, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–30–14, dated August 13, 1999, which describes procedures for replacement of existing anti-icing distributor valves in the wing and tail areas of the airplane with new, improved valves. The new, improved valves increase the weak pressure of the anti-icing distributor valves pressure sensor to 15.5 psig (±0/5 psig). Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Direccion General de Aviacion Civil (DGAC), which is the airworthiness authority for Spain, classified this service bulletin as mandatory and issued Spanish airworthiness directive 04/99, dated July 30, 1999, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

These airplane models are manufactured in Spain 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 require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $4,671 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,942, or $6,471 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A. (CASA): Docket 99–NM–261–AD.

Applicability: All Model CN–235–100 and CN–235–200 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 modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the wings or tail of the airplane, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 4 months after the effective date of this AD, replace the existing anti-icing distributor valves, having part number (P/N) AC960013, in the wing and tail areas of the airplane, with new, improved valves, having P/N AC911016, in accordance with CASA Service Bulletin SB–235–30–14, dated August 13, 1999.

(b) As of the effective date of this AD, no person shall install a distributor valve having P/N AC960013 on any airplane.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 04/99, dated July 30, 1999.

Issued in Renton, Washington, on December 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–136 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require replacement of any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps. This proposal is prompted by reports of fractures of aluminum end caps on brake system accumulators. The actions specified by the proposed AD are intended to prevent high-velocity separation of a brake system accumulator barrel, piston, or end cap, which could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit.

DATES: Comments must be received by February 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2983; 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–335–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–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fracture of aluminum end caps has occurred on brake system accumulators installed on Boeing Model 747 series airplanes. One event resulted in an injury to a maintenance worker. Fracture of the aluminum end caps has been attributed to fatigue cracking caused by stress corrosion or tooling marks. Fracture of an end cap could lead to a rupture of a brake system accumulator, which could result in high velocity separation of the accumulator barrel, piston, or end cap. Such separation could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–32–2461, dated August 19, 1999, which describes procedures for replacement of any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps. Stainless steel end caps provide added strength and corrosion resistance over aluminum end caps, thereby reducing the potential for separation of the end caps. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 1,217 airplanes of the affected design in the worldwide fleet. The FAA estimates that 324 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per accumulator (airplanes may have three, four, or five accumulators of various types) to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately between $7,650 and $13,418 per airplane (depending on the number and type of affected accumulators). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $7,830 and $13,718 per airplane.

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

Regulatory Impact

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

federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 99–NM–335–AD.

Applicability: Model 747 series airplanes; as listed in Boeing Service Bulletin 747–32–2461, dated August 19, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent high velocity separation of a brake system accumulator barrel, piston, or end cap; which could result in injury to personnel in the wheel well area, loss of cabin pressurization, loss of certain hydraulic systems, or damage to the fuel line of the auxiliary power unit; accomplish the following:

Replacement

(a) Within 3,000 flight hours after the effective date of this AD, replace any brake system accumulator that has aluminum end caps with an accumulator that has stainless steel end caps in accordance with Boeing Service Bulletin 747–32–2461, dated August 19, 1999.

Spares

(b) As of the effective date of this AD, no person shall install a brake system accumulator having part number BACA11E1 or BACA11E5 on any airplane.

Alternative Methods of Compliance

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

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

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

Issued in Renton, Washington, on December 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–135 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–28]

Proposed Establishment of Class D Airspace, Amendment to Class D Airspace; Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class D airspace at Key West International Airport, FL, and establish Class D airspace at Key West NAS. Presently, Key West NAS is contained within the Key West International Airport D airspace area. As a result of this proposed action, the Key West International Airport, Class D airspace would be reduced concurrent with the establishment of the Class D airspace at Key West NAS.

DATES: Comments must be received on or before February 4, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–28, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–28.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel

concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class D airspace at Key West International Airport, FL, and establish Class D airspace at Key West NAS. Key West NAS currently is included in the Key West International Airport Class D area airspace. Class D airspace is required to accommodate current Standard Instrument Approach Procedures (SIAP's) and contain Instrument Flight Rules (IFR) operations at Key West NAS. As a result of this proposed action, the Key West International Airport Class D airspace would be reduced concurrent with the establishment of the Class D airspace at Key West NAS. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Key West NAS, FL [New]

Key West NAS, FL
(Lat. 24°34′33″N, long. 81°41′20″W)
Key West International Airport
(Lat. 24°33′23″N, long. 81°45′34″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Key West NAS, excluding that airspace within the Key West International Airport Class D airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL D Key West, FL [Revised]

Key West International Airport, FL
(Lat. 24°33′23″N, long. 81°45′34″W)
Key West NAS
(Lat. 24°34′33″N, long. 81°41′20″W)

That airspace extending upward from the surface to and including 2,500 feet MSL beginning at lat. 24°37′12″N, long. 81°44′41″W; to lat. 24°33′04″N, long. 81°43′48″W; to lat. 24°31′15″N, long. 81°45′22″W; to lat. 24°30′35″N, long. 81°45′14″W; thence counterclockwise via the 5.3-mile radius of Key West NAS to the intersection of the 3.9-mile radius of the Key West International Airport, thence clockwise via the 3.9-mile radius of the Key West International Airport to the point of beginning. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 23, 1999.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–154 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Supplementary proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing further changes to its proposed rulemaking regarding the valuation, for royalty purposes, of crude oil produced from Indian leases. The MMS is proposing to: Change which index prices would be used for valuation, change how those index prices would apply, change how transportation allowances would apply, and streamline proposed Form MMS–4416 for computing adjustments to value for royalty purposes. These amendments are intended to simplify and improve the proposed rule.

DATES: Your comments must be submitted on or before March 6, 2000.

ADDRESSES: Address your comments, suggestions, or objections regarding this supplementary proposed rule to:

By regular U.S. mail. Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; or

By overnight mail or courier. Minerals Management Service, Royalty Management Program, Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; or

By e-mail. RMP.comments@mms.gov. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include ''Attn: RIN 1010–AC24'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

Mail or hand-carry comments with respect to the information collection

burden of the proposed rule to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010–NEW); 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3385, or e-mail RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 1998, MMS published a notice of proposed rulemaking applicable exclusively to the valuation of crude oil produced from Indian leases (63 FR 7089). The comment period for this proposed rule was to close on April 13, 1998, but was extended to May 13, 1998 (63 FR 17249). MMS held two public workshops (63 FR 11384) on this proposed rule: one in Albuquerque, New Mexico, on March 26, 1998; and one in Lakewood, Colorado, on April 1, 1998. Comments received to date are available for public inspection at the RMP offices in Lakewood, or on the Internet at http://www.rmp.mms.gov. MMS will also place any additional comments received on this rule on the Internet. Call David Guzy at (303) 231–3432 for further information.

Because of the substantial comments received on the initial proposal, comments made at the public workshops, and other feedback from the Indian community, MMS is reopening certain provisions of the rulemaking to public comment.

II. Revisions to Proposed Rule

After hearing public comments, MMS is proposing some changes to the February 12, 1998, proposed rule. We summarize the proposed changes below, as well as the related comments that prompted the changes. MMS is requesting public comments on these proposed provisions.

Use of Spot Prices vs. New York Mercantile Exchange (NYMEX) Futures Prices

In response to the February 12, 1998, proposed rule, several commenters objected to the inclusion of NYMEX prices as one of the three values compared to determine royalty value on Indian leases. They argued that NYMEX prices are not attainable by everyone, that use of NYMEX prices effectively moves valuation away from the lease, and that using these prices would add administrative complexity. One comment from an Indian tribe, however, said that use of NYMEX prices was long overdue.

MMS now is proposing to use spot, rather than NYMEX, prices for several reasons. First, we believe that when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location.

This supplementary proposed rule states, at proposed § 206.52(a), that one of the three comparative values used to determine royalty value is the spot price:

(1) For the market center nearest your lease where spot prices are published in an MMS-approved publication;

(2) For the crude oil most similar in quality to your oil; and

(3) For deliveries during the production month.

One exception is that for leases in the Rocky Mountain Region, the appropriate market center and spot price would be at Cushing, Oklahoma (redesignated paragraph (a)(1); previous paragraph (a)(1) was deleted because it related to prompt months under NYMEX pricing). This is because the otherwise-nearest spot price location is at Guernsey, Wyoming, where we believe actual trading is too limited to result in a reliable spot price.

To complement the change from NYMEX to spot prices, § 206.51 of this supplementary proposed rule is amended by revising the definitions of ''Index pricing'' and ''MMS-approved publication'' and adding a definition for ''Rocky Mountain Region'' as follows:

''Index pricing'' would mean using spot prices for royalty valuation.

''MMS-approved publication'' would mean a publication MMS approves for determining spot prices.

''Rocky Mountain Region'' would mean the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

We have also added, at proposed paragraph 206.52(a)(6), that MMS periodically would publish in the **Federal Register** a list of approved spot price publications based on certain criteria, including but not limited to:

(i) Publications that buyers and sellers frequently use;

(ii) Publications frequently mentioned in purchase or sales contracts;

(iii) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and

(iv) Publications independent from MMS, other lessors, and lessees.

Proposed new paragraph (a)(7) states that any publication may petition MMS to be added to the list of acceptable publications. Proposed new paragraph (a)(8) states that MMS will specify the tables you must use in the publications to determine the associated spot prices.

Use of Average of High Daily Spot Prices Rather Than Average of Five Highest NYMEX Settle Prices in a Given Month

We received a number of comments that applying the average of the five highest NYMEX settle prices was unfair and unrealistic and that this represented a price most sellers could not obtain under any circumstances. We agree with this comment and, in addition to changing from NYMEX to spot prices, have modified the subset of spot prices to be used. Rather than applying the five highest spot prices in any given month, we propose at § 206.52(a) to use the average of the daily high spot prices for that month in the selected publication. This should better reflect values generally obtainable, while at the same time fulfilling MMS's trust responsibility to Indian lessors.

Modifications to Major Portion Notification by MMS

Previously-proposed paragraph 206.52(c)(1) would have required MMS to calculate major portion values within 120 days of each production month. Although this should be possible in most cases, MMS can foresee occasional problems in acquiring the needed data and performing the major portion calculations within 120 days. Consequently, MMS proposes to change paragraph 206.52(c)(1) by dropping the 120-day provision and stating that MMS would notify lessees by publishing the major portion value in the **Federal Register**. This should have no adverse impact on royalty payors, because late payment interest would not begin to accrue on any underpayment based on any additional amount owed as a result of the higher major portion value until the due date of the amended Form MMS–2014. Thus, no late payment interest would accrue on the higher major portion value if the payor submitted an amended Form MMS–2014 within 30 days after MMS published the major portion value in the **Federal Register**.

MMS also proposes to make changes in paragraphs 206.52(c)(4) and 206.52(d) to reflect that MMS would notify lessees of the major portion value by publication in the **Federal Register**.

Transportation Costs From Lease Versus Reservation Boundary

We received a number of comments that MMS should not limit transportation deductions to those incurred beyond the reservation boundary. The commenters said that there is no requirement that lessees transport oil within a designated area at no cost to the lessor, and that transportation costs should be calculated from the point where oil is measured for sale. We agree with these comments and propose to change previously-proposed §§ 206.60 and 206.61 to reflect the permissibility of transportation deductions from the lease or unit rather than the designated area, as well as the reality of exchange agreements whose first transfer point is at the lease or unit or an associated aggregation point.

To complement the change to permitting transportation allowances from the lease or unit rather than the designated area, and to better represent exchange agreements whose initial transfer point is at an aggregation point away from the lease or unit, § 206.51 of this supplementary proposed rule is amended by adding a definition of ''Aggregation point'' as follows:

''Aggregation point'' would mean a central point where production is aggregated for shipment to market centers or refineries. It would include, but not be limited to, blending and storage facilities and connections where pipelines join. Pipeline terminations at refining centers also would be classified as aggregation points. MMS periodically would publish in the **Federal Register** a list of aggregation points and associated market centers.

Proposed changes at § 206.60 include:

(1) Modifying the table at paragraph (a)(1) to reflect permissibility of transportation from the lease or unit, rather than the designated area, to the point of sale;

(2) Eliminating existing paragraph (a)(2)(ii) to delete the provision that transportation deductions are not permitted when the sale or transfer takes place in the designated area;

(3) Redesignating existing paragraph (a)(2)(iii) as paragraph (a)(2)(ii);

(4) Modifying the table at paragraph (b)(1) to reflect that the transportation allowance may not exceed 50 percent of the calculated spot, rather than NYMEX, price; and

(5) Amending paragraph (d) to reflect permissibility of location and quality adjustments between the lease or unit and index pricing point.

Proposed changes at § 206.61 include:

(1) Modifying paragraph (c)(1) to reflect permissibility of location and quality adjustments between the lease or unit and market center;

(2) Eliminating existing paragraph (c)(1)(i) to acknowledge the elimination of location differentials based on the difference in crude oil values at the index pricing point and the appropriate market center, due to the proposed change to begin with spot, rather than NYMEX, prices;

(3) Rewording existing paragraph (c)(1)(ii) to reflect location differentials between aggregation points and market centers, rather than designated areas and market centers, and redesignating it as paragraph (c)(1)(i);

(4) Rewording existing paragraph (c)(1)(iii) to similarly reflect location differentials between aggregation points and market centers, and redesignating it as paragraph (c)(1)(ii);

(5) Inserting new paragraph (c)(1)(iii) to reflect permissibility of transportation deductions between the aggregation point and the lease or unit;

(6) Rewording existing paragraph (c)(1)(iv) to reflect permissibility of transportation deductions between the market center and the lease or unit;

(7) Inserting new paragraph (c)(1)(v) to reflect potential quality adjustments at the market center or other intermediate points;

(8) Modifying the table at paragraph (c)(2) to reflect changes related to the permissibility of transportation deductions within the designated area;

(9) Deleting paragraph (c)(2)(i) because it becomes unnecessary given the proposed change to permit transportation deductions within the designated area and the proposed changes regarding spot prices and market centers at § 206.52(a);

(10) Deleting paragraph (c)(2)(ii) because this language is now in the table at paragraph (c)(2);

(11) Rewording paragraphs (c)(3) and (c)(3)(iii) to refer to paragraph (c)(1)(ii) instead of (c)(1)(iii);

(12) Deleting paragraphs (c)(4), (c)(5), and (c)(6) relating to publications used to calculate differentials in the previously-existing but now-deleted paragraph (c)(1)(i); and

(13) Redesignating existing paragraph (c)(7) as paragraph (c)(4).

Modifications to Proposed Form MMS–4416

We received a number of comments that the data requirements for completing Form MMS–4416 are too burdensome and the resultant MMS calculations of location differentials would not be reliable. While we do not agree with the latter comment, we agree that Form MMS–4416 can be streamlined by eliminating or simplifying certain data requirements and clarifying the instructions included with the form. In addition to revising and clarifying the instructions, we propose to change § 206.61(d)(5) by stating that you must submit information on Form MMS–4416 related to all of your crude oil production from *Indian leases* in designated areas, rather than *all* production from designated areas.

This change should help to limit the administrative burden of the information collection while still permitting MMS to acquire the information needed to calculate relevant location differentials and verify royalty values and differentials reported on Form MMS–2014. We have attached a copy of the revised Form MMS–4416 and the associated instructions for comment.

MMS specifically requests comments on the revised paragraphs addressed in this notice. If you have commented already on other portions of the rule, you do not need to resubmit those comments. MMS will respond to all comments in the final rule.

III. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.rmp.mms.gov. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Benefit Data

We have summarized below the estimated costs and benefits of this supplementary proposed rule to all potentially affected groups: industry, State and local governments, Indian tribes and allottees (by fund code), and the Federal Government. The costs are segregated into two categories—those costs that would be incurred in the first year after this rule is effective and those

costs that would be incurred on a continuing basis each year thereafter. The cost and benefit information in this Item 2 of Procedural Matters is used as the basis for the Departmental certifications in Items 3 through 11 below.

a. Industry

Description (see corresponding narrative below)	<Cost>/benefit amount	
	First year	Subsequent years
(1) Cost—Net Negative Revenues	$<4,667,510>	<4,667,510>
(2) Cost—Equipment/Compliance	<1,687,500>	<1,125,000>
(3) Cost—Completing Form MMS–4416	<118,125>	<118,125>
(4) Cost—Filing new 2014 with Major Portion Uplift	<50,000>	<50,000>
(5) Benefit—Administrative Savings	1,100,000	1,100,000
Net Costs to Industry	$<5,423,135>	$<4,860,635>

(1) *Cost—Net Negative Revenues.* We estimate that the oil valuation changes proposed in this rule would increase the annual royalties industry must pay to Indian tribes and allottees by $4,667,510. While many variables (price of oil, change in lease operations, possible royalty in kind sales, etc.) could influence the estimate up or down in subsequent years, we did not make any assumptions regarding these variables. Based on reported revenues by company in 1997, we calculate that small businesses (by U.S. Small Business Administration criteria) would pay approximately $1.4 million or roughly 30 percent of the increase. Based on a study for 1997, there were 225 companies that paid royalties for oil produced from Indian leases. Of that number, 173 were small businesses. The computation of the additional mineral revenues payable to Indian tribes and allottees can be found in section c below.

(2) *Cost—Equipment/Compliance.* Industry would also incur computer, software acquisition, and other costs in order to conform with the new reporting requirements. We estimate that to comply with the rule, industry would need:

—A subscription to an industry newsletter (Platt's Oilgram or similar publication).
—A computer with enough power to effectively run a spreadsheet.
—Spreadsheet software.
—Office space and filing equipment dedicated to maintenance of records relating to the rule.

Although many companies already have these resources available and would incur little additional expense, we estimate the following additional costs:

Newsletter subscription: $2,000 per year
Computer acquisition: 2,000 one-time
Spreadsheet software: 500 one-time
Office space and file equipment ($250 per month for one year: 3,000 per year
Total: $7,500

Because some of the costs are not incurred every year, we reduced the costs for subsequent years' compliance to $5,000. There are approximately 225 oil royalty payors on Indian leases. This equates to $1,687,500 for all 225 payors to comply with the rule in the first year and $1,125,000 in each subsequent year.

(3) *Cost—Completing Form MMS–4416.* Industry would also incur costs to complete the proposed new information collection, Form MMS–4416. Part of the Indian oil valuation comparison would rely on price indexes that lessees may adjust for locational differences between the index pricing point and the aggregation point. Indian land lessees and their affiliates, as well as oil purchasers, would be required to give MMS information on the location/quality differentials included in their various oil exchange agreements and sales contracts. From this data MMS would calculate and publish representative location/quality differentials for lessees' use in reporting royalties in different areas. Data from oil purchasers also would be used by MMS and Indian personnel to verify royalty values and differentials reported on Form MMS–2014.

We estimate the annual costs to industry to submit the Form MMS–4416 to be $118,125. MMS estimates that, on average, a payor would have six exchange agreements or sales contracts to dispose of the oil production from the Indian lease(s) for which it makes royalty payments. Compared to the February 12, 1998, proposal, we revised the number of exchange agreements upward from three to six per payor based on additional information from Indian lessors. We estimate that a payor would need about one-half hour on average to gather the necessary contract information and complete Form MMS–4416.

Filing Due to Contract Changes

We estimate the payor would have to submit the form twice a year because of contract changes in addition to the required annual filing discussed below.

225 payors × 6 agreements or contracts/payor × ½ hour/submission × 2 submissions/year = 1,350 burden hours

MMS estimates that in addition to the 1,350 agreements or contracts submitted by payors, non-payor purchasers of crude oil from Indian leases would also submit about half that amount (675 agreements or contracts) as required by proposed § 206.61(d)(5) (1998). Again, we estimate that the filing of Form MMS–4416 would take 30 minutes per report to gather the necessary documents and extract the data from individual exchange agreements and sales contracts; we also estimate that a non-payor purchaser would file a report twice a year for each agreement/contract.

675 agreements or contracts × ½ hour/submission × 2 submissions/year = 675 burden hours

Annual Filing

We would also require payors and non-payor purchasers to submit an annual Form MMS–4416 for their agreements or contracts. The annual filing requirement would assure Indian lessors, tribes and allottees that all payors and non-payor purchasers are complying with these proposed Indian valuation regulations. We estimate that this annual filing would require 10 minutes per report to indicate a no-change situation.

(1,350 + 675) agreements or contracts × 1 annual submission × ⅙ hour/submission = 337.5 burden hours

Total Filing Burden

Based on $50 per hour (revised upward from $35 per hour in our February 12, 1998, analysis to better reflect current conditions), we estimate the annual cost to industry in subsequent years would be $118,125, computed as follows:

(1,350 + 675 + 337.5 burden hours) × $50/hour = $118,125

(4) *Cost—Filing Supplemental Report of Royalty and Remittance (Form MMS–2014) with Major Portion Uplift.* As mentioned earlier in the provisions of the supplementary proposed rule, MMS would calculate a major portion value specific to each tribe. This value would be based on reported values on the Form MMS–2014. If the MMS-calculated value were greater than what the lessee initially reported, they would have to file a revised Form MMS–2014, and pay additional royalties.

Industry would incur an administrative burden from additional filing of Form MMS–2014 lines to comply with the rule's major portion provision. MMS analyzed reported royalty data for Indian leases for 1997. There were approximately 33,000 individual lines reported for oil and about 6,000 lines for condensate on Form MMS–2014. We estimate that if the proposed rule had applied to this production, there could have been as many as 20,000 additional lines reported annually, or 1,667 lines monthly. This estimate is based on comparisons of the major portion price with initially reported prices and replacing the original price when the major portion price is higher. This estimate includes backing out previously-reported lines and reporting new lines, or effectively deleting and replacing up to 10,000 lines based on the major portion calculations.

Electronic reporting accounts for about 80 percent of the lines reported to MMS by lessees on Form MMS–2014. Thus there would have been about 16,000 lines reported electronically. Based on an average of 2 minutes per line at a cost of $50 per hour, we estimate the administrative burden would be $26,667 annually. MMS estimates that there would have been 4,000 lines reported manually (20 percent of the overall burden) and that this effort would stay the same in the future. Based on an average of 7 minutes per line at $50 per hour, the administrative burden for manual payors would be $23,333 annually. The total estimated cost for filing additional Form MMS–2014 lines is ($26,667 + $23,333) = $50,000.

(5) *Benefits—Administrative Savings.* Industry would realize administrative savings because of the reduced complexity in royalty determination and payment in this proposed rule. Specifically, the proposed rule would result in:

(i) *Simplification of reporting and pricing, coupled with certainty.*

We anticipate that the proposed rule would significantly reduce the time involved in the royalty calculation process. In the proposed framework, the lessee would either report its gross proceeds or the adjusted spot price applicable to its production. The need to work through and apply the current benchmarks for non-arm's-length transactions would be eliminated. Further, once MMS calculates a major portion price, the lessee would compare this price to what they reported and make adjustments as necessary.

It is difficult to quantify the amount of savings by simpler reporting. The current level of time spent calculating royalties varies greatly by company depending on many variables such as the complexity of the disposition or sale of the product, the amount of production to account for, and the computation of any necessary adjustments.

However, we assume that simpler reporting would save each payor at least 30 minutes per month to report. This conservative figure amounts to a reduction of 6 hours per year per payor for a savings of $300. Over the 225 payors, this would amount to a total savings of $67,500 due to the reduced reporting burdens of the proposed rule.

(ii) *Reductions in audit efforts.*

When a company is audited, it incurs significant costs. It may be required to gather records, provide documents, and in some cases provide space and facility resources. Although these costs vary significantly by company and by the nature of the audit, we believe that cost savings at least as great as those for simplified reporting would result.

The MMS audit tracking system indicates that approximately 500 Indian oil and gas leases had some type of audit work initiated in 1997. This estimate does not include leases that may have been audited in 1997, but initiated in another year. Also, this figure does not include company audits where auditors examined a sample of leases that may have contained Indian leases. These 500 leases involved approximately 100 companies. Although it is difficult to quantify the future dollar savings for a similar sample of 100 companies, we believe that the expected reduced audit burden would be a significant industry benefit.

(iii) *Reductions in valuation determinations and litigation.*

The proposed rule would increase certainty for Indian royalty payors. Payors would be assured that if they apply the adjustments required by the proposed rule correctly and remit any additional monies due under the major portion calculation, the amount they report likely would be correct. Additionally, such payors would not be subject to additional bills for additional royalties due with late-payment interest attached. We expect that valuation disputes and requests for valuation determinations would decrease significantly under the proposed rule. Valuation determinations and disputes are very costly for both industry and the Federal Government. Some statistics follow:

- Over the last 10 years, MMS auditors identified more than 50,000 instances dealing with royalty underpayments for both oil and gas from Federal and Indian lands. MMS resolved most of the issues underlying the underpayments before the actual issuance of an order to pay. In fact, MMS issued only 2,100 appealable orders during the same period. Of those, 925 appeals resulted. These audit efforts resulted in the collection of $1.16 billion in additional royalties that otherwise would have gone uncollected. About 20 percent of MMS audit activity is focused on Indian lands. Most Indian audits involve gas because royalties for gas produced from Indian lands exceed oil by almost two-to-one. However, the savings from reduced Indian oil audits would still be substantial.
- Over the past 10 years, Royalty Valuation Division (RVD) Staff responded to over 5,000 separate requests by Federal and Indian lessees for advice on valuation procedures and transportation/processing allowances for royalty calculation purposes. These responses resulted in 247 disputes (about 5 percent of all RVD responses) between MMS and the payor over this same time period. These included disputes over product value (131 separate issues) and allowances for transportation or processing (116 separate issues).
- The Department of the Interior Solicitor's Office reported at least 47 separate cases since 1988 that they believed were significant and involved valuation disputes.

Although it is extremely difficult to quantify the cost to both industry and Government for all valuation disputes since 1988, it is undoubtedly in the tens of millions of dollars. We conservatively estimate that the proposed rule's certainty would reduce payors' legal and other administrative costs on Indian leases by at least a million dollars annually, or about $4,444 for each of the 225 payors.

Altogether, with the limited information we can collect and the gross estimates we made, we assume a total savings to Indian oil lease payors of approximately $1.1 million per year

($67,500 in reporting savings, a similar amount for audit savings, and $1 million in legal and administrative costs), or about $5,000 per payor. This estimate is based on very conservative estimates where actual data are difficult, if not impossible, to obtain. Actual savings likely would be significantly higher.

b. State and Local Governments

Description	<Cost>/benefit amount	
	First year	Subsequent years
Cost—Increased Net Receipts Sharing	0	0

State net receipts sharing costs—that is, the MMS operating costs deducted from a State's share of royalty revenue—would not change as a result of this rule. MMS does not charge any portion of the costs of administering Indian leases to States, including the increase in administrative costs associated with this rule.

c. Indian Tribes and Allottees

Description	<Cost>/benefit amount	
	First year	Subsequent years
Benefit—Additional Mineral Revenues	$4,667,510	$4,667,510

We estimate that our proposed oil valuation regulations would result in increased annual Indian oil royalties of approximately $4.7 million.

(1) *Data Analyzed.* MMS is revising its earlier estimate of $3.6 million that accompanied the February 12, 1998, proposed rule. The original analysis associated with that proposal used data from 1995, and concentrated on the three tribes receiving the majority of royalty revenues. Then we extrapolated these results for the remaining tribes, resulting in approximately $3.6 million in total gain for all the tribes.

For the analysis associated with this supplementary proposed rule we:

(i) *Used 1997 data, because:*

- It is the last complete year for which all months of data were available.
- It represents a typical production year with no major market interruptions.
- It reflects data incorporating most of the edits and corrections performed by the exception processing modules in MMS's Auditing and Financial System and Production Accounting and Auditing System.[1]

(ii) *Analyzed, based on royalty revenues received, the top 12 Indian fund codes representing recipients of royalty revenues from Indian lands*[2] *because:*

- This ensures that we have done a specific analysis for each of the largest royalty recipients.
- This allows us to apply the rule specifically to each fund code, and analyze the impact. This also allows transportation and quality adjustments specific to the oil and condensate produced at particular locations.
- The top 12 Indian oil and condensate fund code recipients account for approximately 97 percent of all royalties received for all Indian lands in 1997. These 12 fund codes are as follows:

Navajo (w/allottees)
Ute Indian Tribe(w/Allottees)
Shoshone/Arapaho (Wind River)(w/Allottees)
Alabama-Coushatta
Anadarko Agency Allotted
Muskogee Area Allotted
Shawnee Agency Allotted
Jicarilla Agency
Ft. Peck Tribal/Allotted
Cook Inlet Region Incorporated (CIRI)
Blackfeet (w/Allottees)
Ute Mountain Ute

(2) *Determining Value.* For the supplementary proposed Indian oil valuation regulations, as stated earlier, MMS proposes to use the greater of the following three calculations to determine value:

(i) *Spot price-based value, adjusted for location differentials and transportation costs.*

Consistent with the provisions in the supplementary proposed rule, one of the three valuation alternatives to be considered would be a location-and quality-adjusted spot price. For all the above fund codes (except CIRI), we used the spot price at Cushing, Oklahoma, for West Texas Intermediate as reported in Platt's Oilgram. (In some cases the Midland, Texas spot price may have been more appropriate, but the actual estimates would vary little using the Midland spot price. This fact, plus ease of administration, led us to use the Cushing value.) For CIRI, we used the Alaska North Slope spot price as reported in Platt's Oilgram.

As required by the proposed rule, we used the average of the daily high spot prices for the trading month that corresponds to the production month as a measure of value. For example, for the production month of February, we used the average of the daily high spot prices from December 26th through January 25th. The average consists of only the business days within the trading month (typically 20 to 23 days).

We made adjustments to the spot price to arrive at a price that is comparable to the oil value on the reservation. We made a separate adjustment for both quality and location as follows:

- Quality

Specific to each of the 12 fund codes, we calculated the weighted average gravity reported for both oil and condensate for the entire year. From this average, we made adjustments based on various posted price adjustment scales in effect for the area to bring the Tribal oil and condensate to 40 degrees API. This matches the specifications for the West Texas Intermediate oil in Platt's Oilgram. In the case of CIRI, we made adjustments to the 26.5 degree API Alaska North Slope oil. We made specific individual adjustments to both oil and condensate for each fund code; these products were not combined. In some cases, the Indian fund code receives royalties on either oil or condensate, but not both. (The calculations specific to each fund code

[1] However, 1997 data are still unaudited and significant adjustments may be made at a later date.

[2] For purposes of this analysis, we used specific fund codes to identify the impact of the rule. The top 12 fund codes represent over 97% of oil royalties received on Indian lands in 1997. There may be other fund codes that also are in some part related to the top 12 codes. For example, the Witchita/Caddo Tribe (which was not analyzed also receives funds from the Anadarko office.

contain proprietary data and are not included with this report.)

• Location

We made location differential estimates specific to each fund code based on Federal Energy Regulatory Commission (FERC) tariffs where available. In most cases, a tariff exists between a collection point on or very near the area represented by the fund code and Cushing, Oklahoma. For the few cases where a tariff does not exist, we made an estimate. We recognize that using these tariffs and estimates is subject to some interpretation. The supplementary proposed rule provides for locational information to be gathered via the proposed Form MMS–4416. Once MMS solicits the information, we can calculate differentials more accurately from the various aggregation points to the spot market centers.

(ii) *Actual gross proceeds received by the lessee or its affiliate.*

We approximated gross proceeds accruing to lessees/affiliates by querying MMS's Auditing and Financial System (AFS) database.[3] For both oil and condensate, we divided the reported total royalty value by total royalty quantity to derive the gross proceeds unit value.

(iii) *Major portion analysis at the 75 percent level.*

Most Indian leases include a ''major portion'' provision, which states that value should be the highest price paid or offered at the time of production for the major portion of oil production from the same field. Like the original proposed rule, the supplementary proposed rule would require one of the three methods of valuation to be a major portion calculation at the 75-percent level. Under the supplementary proposed rule, MMS would calculate the monthly major portion value by arraying sales and associated volumes reported on Form MMS–2014 from lowest price to highest, and applying the price associated with the sale where accumulated volumes exceed 75 percent of the total. In order to calculate this value for the analysis, we used all oil and condensate royalties reported for each fund code. For each month, we arrayed the gross proceeds unit values from the lowest price to the highest price to determine the value at which 75 percent plus one barrel of the tribe's production was sold. We then multiplied this ''major portion'' price by the volumes below the 75-percent ''threshold'' to arrive at an incremental value attributable to the major portion price. We performed this calculation for each month.

(3) Comparison of Values. For each month in 1997, we compared the total fund code royalty value computed using each of the three valuation methods discussed above. Consistent with the supplementary proposed rule, we chose the highest of these values for each month in 1997 and calculated the increment over actual royalties reported. We then summed these incremental values for both oil and condensate by fund code. This grand total value became the estimated gain specific to each fund code under the provisions of the supplementary proposed rule as compared to actual royalties reported in 1997.

In most cases the spot price value was the highest of the three values used in calculating the Indian royalty payment. We based our estimates on the best data available and they may vary when we use actual data. In some cases, the adjusted spot price was lower than the major portion price. This occurred in some months for the Ute Indian Tribe because the oil and condensate produced in the Uinta Basin have a high paraffin or wax content. This high-paraffin crude generally commands a premium over non-paraffin crude, is atypical in assay, and is traded and used only in specialized markets. Further adjustments to the spot price might be needed to better reflect paraffin's value impact.

Typically, the additional royalty associated with the major portion calculation increases based on the number of payors on the reservation. We observed that for fund codes with few payors, little additional royalty resulted from the major portion calculation. On the other hand, when many payors reported, the additional royalty associated with the major portion calculation increased.

(4) *Projection of Gains to All Fund Codes.* To estimate the total annual dollar impact for all 32 fund codes that received royalties from either oil or condensate in 1997, MMS used the combined dollar increase calculated for each of the top 12 fund codes in terms of royalty receipts. Royalties received by these 12 fund codes ($42,700,847) represented 97.2325 percent of the total Indian oil and condensate royalties actually collected in 1997. We estimate that total royalties for the 12 fund codes would increase by about 10.6 percent or $4,538,337 under the proposed rule. The distribution of this increase among the 12 fund codes is shown in the table below.

Navajo (w/Allottees)	$1,126,000.26
Ute Indian Tribe(w/ Allottees)	1,116,358.64
Shoshone/Arapaho(Wind River)(w/Allottees)	1,467,398.60
Alabama-Coushatta	76,098.33
Anadarko Agency Allotted	131,748.84
Muskogee Area Allotted	177,636.27
Shawnee Agency Allotted	46,891.98
Jicarilla Agency	102,195.94
Ft. Peck Tribal/Allotted	122,872.03
Cook Inlet Region Incorporated (CIRI)	44,142.74
Blackfeet (w/Allottees)	92,187.54
Ute Mountain Ute	34,805.81

We then projected the estimated increase for all Indian recipients, as follows:

$$\frac{\$4{,}538{,}337}{97.2325} = \frac{X}{100}$$

$$X = \$4{,}667{,}510$$

We estimate that the total increase for all Indian royalty recipients under the supplementary proposed rule would be $4,667,510.

d. Federal Government

Description (see corresponding narrative below)	<Cost>benefit amount	
	First year	Subsequent years
(1) Cost—Processing Form MMS–4416	<$58,000>	<$58,000>
(2) Cost—Calculating Major Portion	<324,000>	<52,000>
(3) Benefit—Administrative Savings	630,500	630,500
Net Benefit to Federal Government	$248,500	$520,500

[3] The AFS database does not contain all Indian records. Some leases require special handling and are not entered in the database.

(1) *Cost—Processing Form MMS–4416.* Processing Form MMS–4416 would consist of two functions:

(i) *Collecting data.* We estimate we would require 160 hours annually to collect, sort, and file the forms. Using an hourly cost of $50, the annual cost would be $8,000 for this function.

(ii) *Analyzing and publishing data.* We estimate that we would require 1,000 hours to analyze and publish the data gathered from the Form MMS–4416's annually. This estimate includes the time spent reviewing the data to verify royalty values and differentials reported on Form MMS–2014. Using an hourly cost of $50, the annual cost of the analysis would be $50,000.

(2) *Cost—MMS Major Portion Value Calculations.* In 1997, nine of the fund codes used for distributing royalties to specific Indian tribes and Allottee groups involved such limited royalty reporting that an oil major portion analysis would have been meaningless. Separate calculations would be required for condensate for some fund codes. MMS estimates that oil major portion calculations would be needed for 23 of these fund codes. Additionally, 7 of these 23 fund codes would require condensate major portion calculations for a total of 30 separate major portion calculations. Based on the number of lines reported per fund code in 1997, the major portion calculations would be fairly simple for some fund codes and fairly extensive for others. The distribution of royalty lines reported for each of the 30 fund code/product (oil or condensate) groups in 1997 supports this observation:

Over 1,000 lines: 12 fund code/product groups
100–1,000 lines: 12 fund code/product groups
Less than 100 lines: 6 fund code/product groups

MMS estimates that the initial set-up of the major portion calculation would be the greatest burden. This set-up primarily would involve researching the quality aspects of the crude oil and condensate produced on Tribal and Allotted leases and writing the programming code to calculate the major portion figures for each tribe or Allottee. Our experience with major portion calculations for gas production provides us with a basis for estimating the burden to MMS to administer the major portion calculation for oil. We believe that initial set-up would take an average of 400 hours for each fund code/product group with more than 1,000 lines per annum (12 groups), an average of 120 hours for each fund code/product group with more than 100 but less than 1,000 lines per annum (12 groups), and an average of 40 hours for each fund code/product group with less than 100 lines per annum (6 groups). The total set-up burden to MMS would then be 6,480 hours at a cost of $50 per hour or $324,000. Additionally, there would be an ongoing administrative burden to MMS to perform the calculations each month and update the programming code and quality aspects as production is added or abandoned. There also would be administrative costs associated with notifying the tribes and payors of the major portion calculations. This cost is estimated to involve one-half of a full time employee's time at an administrative burden of 1,040 hours per year at $50 per hour or $52,000 per annum.

(3) *Benefit—Administrative Savings.* Additionally, MMS would realize administrative savings because of reduced complexity in royalty determination and payment under this proposed rule. Specifically, the proposed rule would result in:

(i) *Simplification of reporting and pricing, coupled with certainty.* MMS would continue to receive the same reports from the payors that they currently submit. The only difference would be that payors would need less time to calculate the royalty due under the proposed rule. MMS would not realize any significant gains from the reduction in the payor's reporting time.

MMS would realize some gains with the simplification of pricing and the certainty involved. See discussion in paragraphs c (ii) and (iii) below.

(ii) *Reductions in audit efforts.* Since the proposed rule would eliminate use of the non-arm's-length benchmarks, the need for tedious and complex audit work also would be eliminated. Currently, there are 48.5 full-time MMS and tribal employees working on Indian audit issues. Using a figure of $50 per hour, this means that each year $5.044 million is spent on auditing all products on Indian properties. According to the *1997 MMS Mineral Revenues report,* Oil and Condensate accounted for approximately 25 percent of the total Indian revenue received in 1997. As a result, we assume that 25 percent of the audit resources were directed to oil and condensate issues. This equates to $1,261,000 per year in audit resources directed specifically to Indian oil and condensate. Although some audit work still would need to be performed to ensure compliance with the proposed rule, for estimation purposes, we assume half of the total oil and condensate audit effort would be eliminated, for a savings of $630,500.

(iii) *Reductions in valuation determinations and litigation.* As discussed in section III.2(a)(5)(iii) of this preamble, MMS has been engaged in significant litigation and dispute resolution over the past 10 years. It would be nearly impossible to estimate the total cost related to these disputes and exactly how much the proposed rule would save. It is not clear that MMS's fixed costs related to litigation support would decrease under the proposed rule or, if so, how much.

3. Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not an economically significant regulatory action. The Office of Management and Budget (OMB) has made the determination under Executive Order 12866 to review this rule because it raises novel legal or policy issues.

a. This rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

b. This rule would not create serious inconsistencies with other agencies' actions.

c. This rule would not materially affect entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule would raise novel legal or policy issues.

4. Regulatory Flexibility Act

The Department estimates that 173 small businesses would pay 30 percent of the $4.7 million dollar impact of the rule, or an additional $1.4 million annually in royalties to the tribes and individual Indians. This represents approximately 1.8 percent of the sales revenues received by these companies from their Indian leases in 1997. These 173 companies represent less than two percent of the approximately 15,000 small oil and gas companies operating in the United States. Nevertheless, because of the significant economic effect on the 173 companies, MMS has, in this supplemental rulemaking, proposed modifications that would to some extent mitigate the impact on small businesses from the proposals under the February 12, 1998 rule. For example, we are proposing to use spot prices instead of NYMEX prices to simplify the computation of value and bring the valuation point closer to the lease. We are also spreading the average of index-based pricing from the highest

five NYMEX prices for the production month to the average of all high spot prices for the month. We are proposing to increase the transportation deduction by allowing costs from the lease to the reservation boundary. We are also proposing to simplify the Form MMS–4416 and reduce the number of respondents that must submit the form.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–888–734–4247.

5. Small Business Regulatory Enforcement Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

This rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. Because this rule affects only Indian leases, the rule would not have a significant or unique effect on State or local governments. Because royalties would increase for these leases, it would have a beneficial effect on tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

7. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule would not have significant takings implications. This rule would not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

8. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this supplementary proposed rule does not have Federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. This rule does not impose costs on States or localities. This rule does not preempt State law. As stated above, this rule affects only tribal governments.

9. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled Indian Crude Oil Valuation Report, Form MMS–4416, OMB Control Number 1010–0113, expiration date April 30, 2001, which is associated with this supplementary proposed rulemaking. The proposed rule references two other information collections: Report of Sales and Royalty Remittance, Form MMS–2014, OMB 1010–0022; and Oil Transportation Allowance, Form MMS–4110, OMB 1010–0061. However, in this proposed rule we are only soliciting comments on the Indian Crude Oil Valuation Report.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by February 4, 2000. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–0113), 725 17th Street, NW, Washington, DC 20503 [telephone (202) 395–7340]. You should also send copies of these comments to us.

Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ''to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information.* * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We received a number of comments that the data requirements for completing Form MMS–4416 were too burdensome and the resultant MMS location differential calculations would not be reliable. We do not agree that the calculation of differentials from Form MMS–4416 data would not be reliable. However, in response to comments received, we streamlined Form MMS–4416 by eliminating and/or simplifying certain data requirements and clarifying the instructions included with the form. In addition to revising/clarifying the instructions, the supplementary proposed rule proposes to change lessees' submission requirements on Form MMS–4416 to data related to crude oil production from Indian leases in designated areas rather than all production from designated areas. These changes will aid respondents in complying with the requirements of this information collection and still permit MMS to acquire the information needed to calculate relevant location differentials and verify royalty values and differentials reported on Form MMS–2014.

We have revised the approved information collection, OMB Control Number 1010–0113, according to the supplementary proposed rulemaking and to be responsive to comments received. We estimate the total annual burden for this information collection is approximately 2,363 hours, an increase over the current OMB inventory of 1,050 hours. Although we have revised and streamlined the forms and clarified the instructions, we still estimate the time to complete Form MMS–4416 is ½ hour, and, therefore, there is no increase in hours associated with the program change for this collection. However, we have revised our estimate of the number of respondents upward from 125 oil royalty payors to 225 payors; this is an adjustment of 1,050 hours.

11. National Environmental Policy Act

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

12. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, ''§ 206.61 How do lessees determine transportation allowances and other adjustments?'' (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects in 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: December 3, 1999.

Sylvia Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR Part 206 is proposed to be amended as follows:

PART 206—PRODUCT VALUATION

1. The Authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701, 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—Indian Oil

2. Section 206.51 is amended by adding the definitions of *Index pricing, MMS-approved publication Aggregation point,* and *Rocky Mountain Region* as follows:

§ 206.51 Definitions.

* * * * *

Aggregation point means a central point where production is aggregated for shipment to market centers or refineries. It includes, but is not limited to, blending and storage facilities and connections where pipelines join. Pipeline terminations at refining centers also are classified as aggregation points. MMS will publish periodically in the **Federal Register** a list of aggregation points and associated market centers.

* * * * *

Index pricing means using spot prices for royalty valuation.

* * * * *

MMS-approved publication means a publication MMS approves for determining spot prices.

* * * * *

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

* * * * *

3. Section 206.52 is revised to read as follows:

§ 206.52 How does a lessee determine the royalty value of the oil?

This section explains how you must determine the value of oil produced from Indian leases. For royalty purposes, the value of oil produced from leases subject to this subpart is the value calculated under this section with applicable adjustments determined under this subpart. The following table lists three oil valuation methods. You must determine the value of oil using the method that yields the highest value. As explained under paragraph (d) of this section, you must select from the first two methods and make an initial value calculation and payment based on the method that yields the highest value. MMS will calculate and publish the value under the third method. If the third method yields a higher value than the first two methods, you must adjust the value from your initial calculation as explained under paragraph (d) of this section.

Valuation method	Subject to
The average of the daily high spot prices for deliveries during the production month for the market center nearest your lease for crude oil most similar in quality to your oil.	Paragraphs (a)(1)–(5) of this section.
The gross proceeds from the sale of your oil under an arm's-length contract	Paragraphs (b)(1)–(4) of this section.
A major portion value that MMS calculates for each designated area and publishes in the **Federal Register**.	Paragraphs (c)(1)–(4) of this section.

(a) Calculate the average daily high spot price for deliveries during the production month for the crude oil most similar in quality to your oil at the market center nearest your lease where spot prices are published in an MMS-approved publication by averaging the daily high spot prices for the month in the selected publication. Use only the days and corresponding high spot prices for which such prices are published.

(1) For leases within the Rocky Mountain Region the appropriate market center is at Cushing, Oklahoma.

(2) You must adjust the index price for applicable location and quality differentials under § 206.61(c) of this subpart.

(3) If applicable, you may adjust the index price for transportation costs under § 206.61(c) of this subpart.

(4) If you dispose of oil under an exchange agreement and you refine rather than sell the oil that you receive in return, you must use this paragraph (a) to determine initial value. Do not use paragraph (b) of this section.

(5) MMS will monitor the spot prices. If MMS determines that spot prices are unavailable or no longer represent reasonable royalty value, MMS will amend this section to establish a substitute valuation method.

(6) MMS periodically will publish in the **Federal Register** a list of approved spot price publications based on certain criteria, including but not limited to:

(i) Publications that buyers and sellers frequently use;

(ii) Publications frequently mentioned in purchase or sales contracts;

(iii) Publications that use adequate survey techniques, including development of spot price estimates

based on daily surveys of buyers and sellers of crude oil; and

(iv) Publications independent from MMS, other lessors, and lessees.

(7) Any publication may petition MMS to be added to the list of acceptable publications.

(8) MMS will specify the tables you must use in the publications to determine the associated spot prices.

(b) You may calculate value using the gross proceeds from the sale of your oil under an arm's-length contract. If you use this method, the provisions of this paragraph (b) apply.

(1) You may adjust the gross proceeds-based value calculated under this section for appropriate transportation costs under § 206.61(c) of this subpart.

(2) If you dispose of your oil under an exchange agreement and then sell the oil that you receive in return under an arm's-length contract, value is the sales price adjusted for appropriate quality differentials and transportation costs.

(3) MMS may monitor, review, or audit the royalty value that you report under this paragraph (b).

(i) MMS may examine whether your oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you. If it does not, then MMS may require you to value the oil sold under that contract at the total consideration you received.

(ii) MMS may require you to certify that the arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(4) You must base value on the highest price that you can receive through legally enforceable claims under your oil sales contract. If you fail to take proper or timely action to receive prices or benefits you are entitled to, you must base value on that obtainable price or benefit.

(i) In some cases you may apply timely for a price increase or benefit allowed under your oil sales contract, but the purchaser refuses your request. If this occurs, and you take reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until you receive monies or consideration resulting from the price increase or additional benefits. This paragraph (b)(4) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(ii) Any contract revisions or amendments that reduce prices or benefits to which you are entitled must be in writing and signed by all parties to your arm's-length contract.

(c) You may use a major portion value that MMS will calculate. If you use this method, the provisons of this paragraph apply.

(1) MMS will calculate the major portion value for each designated area and notify lessees by publishing these values in the **Federal Register**.

(2) Each designated area includes all Indian leases in that area. MMS will publish in the **Federal Register** a list of the leases in each designated area. The designated areas are:

(i) Alabama-Coushatta;

(ii) Blackfeet Reservation;

(iii) Crow Reservation;

(iv) Fort Belknap Reservation;

(v) Fort Peck Reservation;

(vi) Jicarilla Apache Reservation;

(vii) MMS-designated groups of counties in the State of Oklahoma;

(viii) Michigan Agency;

(ix) Navajo Reservation;

(x) Northern Cheyenne Reservation;

(xi) Southern Ute Reservation;

(xii) Turtle Mountain Reservation;

(xiii) Ute Mountain Ute Reservation;

(xiv) Uintah and Ouray Reservation;

(xv) Wind River Reservation; and

(xvi) Any other area that MMS designates. MMS will publish any new area designations in the **Federal Register**.

(3) MMS will calculate the major portion value from information submitted for production from leases in the designated area on Form MMS–2014, Report of Sales and Royalty Remittance.

(i) MMS will use information from Form MMS–4416, Indian Crude Oil Valuation Report, to verify values reported on Form MMS–2014. See § 206.61(d)(5) of this subpart for further requirements related to Form MMS–4416.

(ii) MMS will arrange the reported values (adjusted for location and quality) from highest to lowest. The major portion value is the value of the 75th percentile (by volume, including volumes taken in kind) starting from the lowest value.

(4) MMS will not change the major portion value after it publishes that value in the **Federal Register**, unless an administrative or judicial decision requires MMS to make a change.

(d) On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values determined under paragraph (a) or (b) of this section, respectively. You must file this report and pay MMS by the date royalty payments are due for the lease. MMS will inform you of its calculated major portion value for the designated area by publishing that value in the **Federal Register**. If this value exceeds the value you initially reported for the production month, you must submit an amended Form MMS–2014 with the higher value within 30 days after MMS publishes the major portion value in the **Federal Register**. MMS will specify, in the *MMS Oil and Gas Payor Handbook,* additional requirements for reporting under paragraph (a), (b), or (c) of this section. You will not begin to accrue late-payment interest under 30 CFR 218.54 on any underpayment based on any additional amount owed as a result of the higher major portion value until the due date of your amended Form MMS–2014.

4. Section 206.54 is redesignated as § 206.60 and revised to read as follows:

§ 206.60 What transportation allowances and other adjustments apply to the value of oil?

(a) *Transportation allowances.* (1) You may deduct a transportation allowance from the value of oil determined under § 206.52 of this part as explained in the following table.

See § 206.61(a) and (b) for information on how to determine the transportation allowance.

If you value oil	Then
Based on index pricing under § 206.52(a)	You may claim a transportation allowance only under the limited circumstances listed at § 206.61(c)(2).
Based on gross proceeds under § 206.52(b) and the movement of the oil is not gathering.	MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease or unit to the sales point.

(2) You may not deduct a transportation allowance for transporting oil:

(i) Taken as royalty in kind and delivered to the lessor in the designated area; or

(ii) When you value oil based on a major portion value under § 206.52(c)

(b) *Are there limits on my transportation allowance?*

(1) Except as provided in paragraph (b)(2) of this section:

If you determine the value of the oil based on	Then your transportation allowance deduction may not exceed
Index pricing under § 206.52(a)	50 percent of the average daily high spot prices for the delivery month for the applicable market center.
Gross proceeds under § 206.52(b)	50 percent of the value of the oil at the point of sale.

(2) You may ask MMS to approve a transportation allowance deduction in excess of the limitation in paragraph (b)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(c) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in § 206.61 of this subpart. You may not allocate transportation costs from production for which those costs were incurred to production for which those costs were not incurred. You must express transportation allowances for oil as dollars per barrel.

(d) *What other adjustments apply when I value production based on index pricing?* If you value oil based on index pricing under § 206.52(a), you must adjust the value for the differences in location and quality between oil at the lease and the index pricing point as specified under § 206.61(c). See § 206.61 for more information on adjusting for location and quality differences.

(e) *What additional payments may I be liable for?* If MMS determines that you underpaid royalties because an excessive transportation allowance or other adjustment was claimed, then you must pay any additional royalties, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest if you understated the transportation allowance or other adjustment. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.61(e) of this subpart.

5. Section 206.55 is redesignated as section 206.61 and is amended by revising the section heading; removing paragraphs (b)(5) and (c)(2)(viii); redesignating paragraphs (c) through (g) as paragraphs (d) through (h); adding new paragraphs (c) and (d)(5); and revising newly redesignated paragraphs (d)(1)(i), (d)(2)(i), (d)(4) to read as follows:

§ 206.61 How do lessees determine transportation allowances and other adjustments?

* * * *

(c) *What adjustments apply when lessees use index pricing?*

(1) When you use index pricing to calculate the value of production under § 206.52(a), you must adjust the index price for location/quality differentials. Your adjustments must reflect the reasonable oil value differences in location and quality between the lease and the index pricing point. The adjustments that might apply to your production are listed in paragraphs (c)(1)(i) through (v) of this section. See paragraphs (c)(2) and (c)(3) of this section to determine which adjustments you must use based on how you dispose of your production. These adjustments are:

(i) An express location/quality differential under your arm's-length exchange agreement that reflects the difference in value of crude oil at the market center and the aggregation point.

(ii) A location/quality differential reflecting the crude oil value difference between the market center and the aggregation point that MMS will publish annually based on data it collects on Form MMS–4416. MMS will calculate each differential using a volume-weighted average of the differentials reported on Form MMS–4416 for similar quality crude oils for the aggregation point/market center pair for the previous reporting year. MMS may exclude apparent anomalous differentials from that calculation. MMS will publish separate differentials for different crude oil qualities that are identified separately on Form MMS–4416 (for example, sweet versus sour or different gravity ranges). MMS will publish these differentials in the **Federal Register** by [the effective date of the final regulation] and by January 31 of all subsequent years. You must use MMS-published rates on a calendar year basis—apply them to January through December production reported February through the following January.

(iii) Actual transportation costs between the aggregation point and the lease or unit determined under this section.

(iv) Actual transportation costs between the market center and the lease or unit determined under this section.

(v) Quality adjustments based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points, at the aggregation point, or at the market center that applies to your lease.

(2) To determine which adjustments and transportation allowances apply to your production, use the following table.

If you	And	Then
Dispose of your production under an arm's-length exchange agreement.	That exchange agreement has an express location differential to reflect the difference in value between the aggregation point and the associated market center.	Adjust your value using paragraph (c)(1)(i).
Move your production from a lease directly to an MMS-identified market center.	.....	Use paragraph (c)(1)(v) to determine the quality adjustment and paragraph (c)(1)(iv) to deduct the actual transportation costs to that market center.

If you	And	Then
Do not move your production from a lease to an MMS-identified market center.	You instead move it directly to an alternate disposal point (for example, your own refinery).	Use paragraph (c)(1)(v) to determine the quality adjustment and paragraph (c)(1)(iii) to deduct the actual transportation costs to the alternate disposal point. Treat the alternate disposal point as the aggregation point to apply paragraph (c)(1)(iii).
Transport or dispose of your production under any other arrangement.	.....	Adjust your value using paragraphs (c)(1)(ii), (c)(1)(iii), and (c)(1)(v).

(3) If an MMS-calculated differential under paragraph (c)(1)(ii) of this section does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you.

(i) After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential.

(ii) You must demonstrate why the published differential does not adequately reflect your circumstances.

(iii) MMS will calculate such a differential when it receives your request or when it discovers that the differential published under paragraph (c)(1)(ii) of this section does not apply to your oil. MMS will bill you for any additional royalties and interest due. If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, the calculated differential will apply beginning with the effective date of the published differentials. Otherwise, the MMS-calculated differential will apply beginning the first day of the month following the date of your application. In that event, the published differentials will apply in the interim and MMS will not refund any overpayments you made due to your failure to timely request MMS to calculate a differential for you.

(iv) Send your request to: Minerals Management Service, Royalty Management Program, Royalty Valuation Division, P.O. Box 25165, Mail Stop 3150, Denver, CO 80225–0165.

(4) Periodically, MMS will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;

(iii) Pipeline and other transportation linkage;

(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;

(v) Simplification; and

(vi) Other relevant matters.

(d) *Reporting requirements*—(1) Arm's-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (d)(1)(v) and (d)(1)(vi) of this section, you must submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, before, or at the same time as, you report the transportation allowance determined under an arm's-length contract on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received.

* * * * *

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (d)(2)(v) and (d)(2)(vii) of this section, you must submit an initial Form MMS–4110 before, or at the same time as, you report the transportation allowance determined under a non-arm's-length contract or no-contract situation on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received. The initial report may be based upon estimated costs.

* * * * *

(4) *What additional requirements apply to Form MMS–2014 reporting?* You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014, unless MMS approves a different reporting procedure. MMS will provide additional reporting details and requirements in the *MMS Oil and Gas Payor Handbook.*

(5) *What information must lessees provide to support index pricing adjustments, and how is it used?* You must submit information on Form MMS–4416 related to all of your crude oil production from Indian leases. You initially must submit Form MMS–4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this regulation takes effect], and by October 31 of each succeeding year. In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply. All other purchasers of crude oil from designated areas likewise are subject to the requirements of this paragraph (d)(5).

* * * * *

Note: The following attachments will not appear in the Code of Federal Regulations.

BILLING CODE 4310–MR–P

Indian Crude Oil Valuation Report

1. Reporter Name: _____
Address: _____
City, State _____ Zip _____

Applies to Multiple leases ☐
(attach list of leases)
Designated Area _____

Reporting Period __ __, __ __ __ __ to __ __, __ __ __ __ MMS Payor Code ___ ___ ___ ___ ___ Attached Page Provided ☐

2. Contract Type and I.D. ☐ Outright Purchase ☐ Buy/Sell ☐ No-Price Exchange ☐ Sale subject to balancing ☐ Outright Sale

Contract Number _____ Multiple Party Exchange ☐

3. Other Contract Party Name _____ Other Contract Party's MMS Payor Code (if available) ___ ___ ___ ___ ___

4. Contract Term

Effective Date: ____/____/____ (MM/DD/YY) Terms: ☐ Month-to-month extensions,

☐ No change from last filing

Initial Term: _____ (Months) ☐ Fixed duration

Expiration Date: ____/____/___ (MM/DD/YY)

	Oil You Sold or Transferred or Refined	Oil You Received or Purchased
5. Title Transfer Location	Location of Transfer _____ Cost of transporting to title transfer point (see instructions)___.____ $/bbl. Describe terms _____ _____ _____	Location of Transfer _____ Cost of transporting to title transfer point (see instructions)___.____ $/bbl. Describe terms _____ _____ _____
6. Volume Terms	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)
7. Pricing Terms	☐ Posted Price Posting Company Name(s) _____ Poster's Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ Other (Describe) _____ _____ _____ _____._____ $/BBL	☐ Posted Price Posting Company Name(s) _____ Poster's Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ Other (Describe) _____ _____ _____ _____._____ $/BBL

(page 1 of 2)

Form MMS-4416
OMB 1010-0113
Expires 4/30/2001

Indian Crude Oil Valuation Report

	Oil You Sold or Transferred or Refined	Oil You Received or Purchased
8. Crude Oil Quality and Adjustments	API Gravity: ___.___ °API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: ☐ No Deductions ☐ Deemed ___.___ °API, _____ $/BBL ☐ Actual ___.___ °API, _____ $/BBL Other Quality Adjustments: ☐ More than one Description:_____ (☐ Deemed or ☐ Actual) Adjustments: ____.___$/BBL Description:_____ (☐ Deemed or ☐ Actual) Adjustments: ____.___$/BBL	API Gravity: ___.___ °API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: ☐ No Deductions ☐ Deemed ___.___ °API, _____ $/BBL ☐ Actual ___.___ °API, _____ $/BBL Other Quality Adjustments: ☐ More than one Description:_____ (☐ Deemed or ☐ Actual) Adjustments: ____.___$/BBL Description:_____ (☐ Deemed or ☐ Actual) Adjustments: ____.___$/BBL
9. Exchange Differential	Exchange Differential Received (+) _____.____ $/BBL or Paid (-) _____.____ $/BBL	

WARNING: PUBLIC LAW 97–451 PROVIDES CIVIL AND CRIMINAL PENALTIES FOR FALSE OR INACCURATE REPORTING Failure to report as required may result in suspension of operations or other enforcement actions.

Have you received or paid any other consideration, in any form, for the sale, purchase, or exchange of this crude oil, either at this location or at any other location? (☐ Yes, or ☐ No) If Yes, Explain: _____

I certify to the best of my knowledge and belief, the data submitted in this report is accurate, complete, current, and in conformance with limitations and requirements set forth in the terms of regulations set forth in 30 CFR 206.
Authorized Signature_____ and Date_____

Printed name of authorized person _____

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to allow MMS to decrease reliance on oil posted prices, develop valuation rules that better reflect market value, and add more certainty to valuing oil produced from Indian lands. The public reporting burden for this information collection is estimated to average 1/2 hour per response. MMS will keep confidential, under applicable laws and regulations, any and all data submitted that is privileged, confidential, or otherwise exempt. Direct comments regarding the burden estimate or any other aspect of this questionnaire including suggestions for reducing this burden to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N.W., Washington, DC 20240. 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.

(Page 2 of 2)

BILLING CODE 4310–MR–C

Step-by-Step Instructions for MMS Form 4416

This form is designed to collect valuation and location/quality differential information about oil produced from Indian and allotted leases to determine its market value. You should fill out this form if you produce, sell, purchase, exchange, or refine oil produced from Indian lands. A separate form should be used for each contract. If a contract refers to more than one lease, one form may be filled out provided a list of leases it covers is attached.

1. Company (Reporter) Information

Fill out your company name and address. Indicate whether the contract you are reporting on applies to more than one lease by marking the box in the upper right corner. If more than one form is needed to provide the required information (*e.g.*, multiple-party exchange agreement), the address may be omitted from subsequent forms provided that the cover form containing your address is attached.

—Write in the reporting period this form covers in the following format: MM, YYYY.
—Write in the name of the Designated Area from which the oil production on this form originates (a list of leases found in each Designated Area will be published in the **Federal Register**).
—Enter your five-digit MMS payor code on each form submitted (if your company does not have a payor code MMS will assign one).

Mark the ''Attached Page Provided'' box provided if any information is contained on an attached page.

2. Contract Type

Mark the appropriate box to indicate the contract type. [Outright Purchases are made at arm's-length and no additional consideration is paid (in this transaction or in any other transaction). Buy/Sell is an exchange where monetary value is assigned to settle both transactions in the exchange. No-Price Exchange is a transaction where no monetary value is assigned to either transaction in the exchange; instead, a dollar amount is usually assigned to the difference between the two values. Sales Subject to Balancing are transactions tied to an overall exchange agreement (either expressed or implied) where volumes purchased and sold by each party are in balance. Outright Sales are made at arm's-length and no additional consideration is received (in this transaction or in any other transaction). If this oil transaction is part of a multiple-party (three or more) exchange agreement, check the box to the right of the contract number titled Multiple-Party Exchange].

Also fill in the Contract Number—use the I.D. that would allow a third party to clearly identify the document.

3. Other Contract Party Name

Write the name of the other party to the contract involving the Indian oil. If that party has an MMS payor code, write it in the space provided (if known). If the transaction is part of a multiple-party exchange, attach a list of the other parties involved in the exchange (write their MMS payor code, if known, next to each party's name).

4. Contract Term

Note: If you are filing this contract to satisfy the annual Oct. 31 reporting requirement and none of the required entries in steps 4–9 have changed from the last report (filed in the last 12 months), check the box in the lower left corner of section 4. If no change has occurred except to extend the expiration date of the contract, check the box in the lower left corner of section 4 and fill in the new expiration date in this section. Make sure that an authorized representative signs and dates the form. Otherwise complete the form as instructed below).

In the Effective Date field, fill in the date the contract started, and fill out the Initial Term in months. Check the contract term that applies to this contract (either Month-to-Month Extensions or Fixed Duration). If the contract is of fixed duration, fill in the Expiration Date in the space provided.

Items 5–8

The information on the rest of the form is divided into two columns. The left column should be used to record information about oil you produced *and* either sold, transferred in an exchange or buy/sell, or refined. The right column should be used for oil that you purchased or you received in an exchange or buy/sell (*i.e.,* you will use both columns for oil that is part of an exchange agreement, and you will use one column for oil you produced and refined, produced and sold outright or purchased outright).

5. Title Transfer Location

In the space provided, write the location where you relinquished title to the oil you sold or transferred and/or where you took title to oil you purchased or received under an exchange. Where title transferred at the lease, write ''at the lease'' and the 10-digit MMS lease number (if the title transfer involves production from more than one Indian lease, provide the list of the leases contributing to the production). If the transfer occurs at an aggregation point or market center indicate its name.

If you (or your affiliate) refine the oil you produce, write the words ''producer refines its oil'' in the space adjacent to the ''Location of Transfer'' (note: you will not have to complete section 7, ''Pricing Terms'' if you refine oil you produce from Indian or allotted lands).

In the space provided after ''Cost of Transporting to Title Transfer Point,'' fill in the $/barrel cost of transporting oil you produced from the production location to the point where title transfers (do not include the cost of gathering). Likewise, for oil you received, fill in the transportation cost if known. Describe the terms (*i.e.* starting location, ending location) involved in transporting the oil. Use Designated Areas (as defined at 30 CFR 206.51 and listed at 30 CFR 206.52(c)(2)), Aggregation Points (as defined at 30 CFR 206.51), or State, Section/Township/Range. Where oil traverses more than one MMS Aggregation Point be sure to include all segments of the transportation route. Attach a separate sheet, if needed, to adequately describe the transportation.

6. Volume Terms

If your contract states that all available oil will be purchased, mark the All Available box and write in the estimated barrels per day of oil disposed or received. Otherwise, check the Fixed box and write in the fixed volume disposed of or received as specified in the contract.

7. Pricing Terms

This section pertains to information about price received (or paid) in arm's-length sales (or purchases) of crude oil produced from Indian or allotted lands. If this oil is part of a buy/sell exchange, report the price terms stated in the contract. For any exchange, the differential should be reported in section 9.

If you purchase or sell oil production from Indian or allotted lands: If the contract references a Posted Price, mark the box provided and write in the name(s) of the company or companies posting(s) under ''Posting Company Name(s).'' If the crude oil type is designated (*e.g.* sweet or sour), write this in the space labeled ''Poster's Crude Type/Designation.'' List any Premium (+) to or deduction (−) from the referenced price(s).

Other: describe the pricing method used.

Index Price: If an index price is used, identify it and the source publication(s) in the space provided.

Calculated Price: If the contract uses a formula to determine price, completely describe the method used. Attach an additional sheet if necessary.

Fixed Price: If the price is set through the duration of the contract, list the price per barrel.

If the pricing terms are not covered under any of the above pricing provisions, describe the pricing term used in the space provided. Attach an additional sheet if necessary.

8. Crude Oil Quality and Adjustments

Quality Measures: Fill in the API Gravity of oil disposed of and/or received to the nearest tenth of a degree. Fill in the Sulfur Content of the oil you disposed of and/or received to the nearest tenth of a percent. Fill in the Paraffin Content of the oil you disposed of and/or received to the nearest tenth of a percent.

Adjustments: Fill in this information only where the contract specifically identifies separate adjustments with a monetary value assigned to each adjustment.

API Gravity: Check the appropriate box. If the gravity is ''Deemed,'' write the deemed API gravity to the nearest tenth of a degree and any corresponding price adjustment from the contract. If an ''Actual'' reference gravity is used to make an adjustment, write the gravity to the nearest tenth of a degree and any corresponding price adjustment from the contract.

Other Quality Adjustment(s): Space is provided for up to two other quality adjustments. Use the spaces provided in this section to describe additional quality adjustments. Indicate whether the measure is ''Actual'' or ''Deemed,'' and the dollar-per-barrel adjustment for the quality measure. If your contract contains more than two other quality adjustments, check the ''More than two'' box and attach a separate sheet to fully describe the quality adjustments. Indicate the type of adjustment and whether the quality measured is ''Actual'' or ''Deemed.'' Also, provide the adjustment amount in dollars per barrel for each adjustment made.

9. Exchange Differential

This section requests information about the differential received or paid by you under an exchange agreement. *Only complete this section if the contract you are reporting on is an exchange agreement.*

If oil produced from Indian tribal or allotted lands is either transferred or received by you in an exchange:

In exchanges where two separate volumes of oil were exchanged between the two parties to the exchange contract, there may be a differential paid by the party who exchanges oil considered to be worth less than the oil it receives. This may result from relative location advantages, or quality differences between the oils.

If your purpose under an exchange was to transport your oil on another party's pipeline, the payment will reflect the cost of service to transport your oil. This type of transaction is not considered an exchange for purposes of this information collection but should be included in ''Title Transfer Location'' section 5, above. Any separate adjustments that were made to reflect gravity or sulfur content of your oil will be addressed in section 9 below.

If a differential is paid or received by you or your affiliate, write the total of any differential payment you received, (+) *or* the total of any differential payment you made (−) under the exchange agreement in the space provided.

Authorized Signature: Have you received or paid additional consideration? If you have received or paid consideration other than that shown on the form, check the ''yes'' box and provide an explanation in the space provided. If the form accurately reports all the compensation you received or paid for oil reported on this form, check ''no.'' An individual authorized to represent the party to the contract you are summarizing must sign the form. Write the date the form was completed in the space provided.

[FR Doc. 00–58 Filed 1–4–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 813

RIN 0701–AA–63

Visual Information Documentation Program

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is revising our rules on the Visual Information Documentation Program of the Code of Federal Regulations (CFRs) to reflect current policies. Part 813 (previously Part 811a) implements Air Force Instruction (AFI) 33–117, Visual Information Management, and applies to all Air Force activities.

DATES: Submit comments on or before March 6, 2000.

ADDRESSES: Mr. Raymond Dabney, HQ AFCIC/ITSM, 1250 Air Force Pentagon, Washington, DC 20330–1250, 703–588–6136.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Dabney, HQ AFCIC/ITSM, 703–588–6136.

SUPPLEMENTARY INFORMATION: The Department of the Air Force is revising Part 813, previously 32 CFR 811a, to reflect current policies. This part implements AFI 33–117, Visual Information Management, and applies to all Air Force activities.

List of Subjects in 32 CFR Part 813

Archives and records, Motion pictures.

For the reasons set forth in the preamble, the Department of the Air Force is proposing to amend 32 CFR chapter VII by redesignating part 811a as part 813 and revising it to read as follows:

PART 813—VISUAL INFORMATION DOCUMENTATION PROGRAM

Sec.
813.1 Purpose of the visual information documentation (VIDOC) program.
813.2 Sources of VIDOC.
813.3 Responsibilities.
813.4 Combat camera operations.
813.5 Shipping or transmitting visual information documentation images.
813.6 Planning and requesting combat documentation.
813.7 Readiness reporting.

Authority: 10 U.S.C. 8013

§ 813.1 Purpose of the visual information documentation (VIDOC) program.

Using various visual and audio media, the Air Force VIDOC program records important Air Force operations, historical events, and activities for use as decision making and communicative tools. VIDOC of Air Force combat operations is called COMCAM documentation.

§ 813.2 Sources of VIDOC.

(a) Primary sources of VIDOC materials include:

(1) HQ AMC active and reserve combat camera (COMCAM) forces, both ground and aerial, whose primary goal is still and motion media documentation of Air Force and air component combat and combat support operations, and related peacetime activities such as humanitarian actions, exercises, readiness tests, and operations.

(2) Visual information forces and combat documentation capabilities from other commands: HQs ACC, AETC, AFRES, and AFSPACECOM.

(3) Communications squadron base visual information centers (BVISCs).

(4) Air Digital Recorder (ADR) images from airborne imagery systems, such as heads up displays, radar scopes, and images from electro-optical sensors carried aboard aircraft and weapons systems.

(5) Photography of Air Force Research, Development, Test & Evaluation (RDT&E) activities, including high speed still and motion media optical instrumentation.

(b) [Reserved]

§ 813.3 Responsibilities.

(a) HQ AFCIC/ITSM:

(1) Sets Air Force VIDOC policy.

(2) Oversees United States Air Force (USAF) COMCAM programs and combat readiness.

(3) Makes sure Air Force participates in joint actions by coordinating with the Office of the Secretary of Defense staff, Joint Chiefs of Staff (JCS), executive departments, and other branches of the United States Government.

(4) Approves use of Air Force COMCAM forces in non-Air Force activities.

(b) Air components:

(1) Manage air component COMCAN and visual information support within their areas of responsibility. Documents significant events and operations for theater and national-level use.

(2) Sets requirements for COMCAM and VI support. Includes requirements in operations plans (OPLAN) force lists, concept plans (CONPLAN), operations orders (OPORD), and similar documents. See Air Force Manual (AFMAN) 10–401, Operation Plan and Concept Plan Development and Implementation.

(3) Coordinate with MAJCOM VI managers to plan and source VIDOC forces for war, contingencies, and exercises.

(4) Provide input (VI and COMCAM requirements) to HQ AMC/SCMV, 203 West Losey Street, Room 3180, Scott AFB, IL 62225–5223, as required to develop the annual VI Exercise Support Plan. Include requirements to exercise VI forces to refine operational procedures and meet defined objectives.

(c) HQ AMC:

(1) Provides primary Air Force ADR theater support to the air component commanders.

(2) Maintains a deployable theater support Unified Transportation Command (UTC) to manage ADR requirements above the aviation wing level. This includes the gathering, editing, copying, and distribution of ADR images from combat aviation squadrons for operational analysis, bomb damage assessment, collateral intelligence, training, historical, public affairs, and other needs.

(3) Sets combat training standards and develops programs for all Air Force COMCAM personnel (includes both formal classroom and field readiness training).

(4) Coordinates and meets COMCAM needs in war, operations, and concept plans.

(5) Provides the Air Force's primary COMCAM capability and assists air components and joint commands with deliberate and crisis action planning for USAF's COMCAM assets.

(6) Provides component and theater commands COMCAM planning assistance and expertise for contingencies, humanitarian actions, exercises, and combat operations.

(7) Acts as manpower and equipment force packaging (MEFPAK) manager for COMCAM UTCs.

(8) Funds HQ AMC COMCAM personnel and equipment for contingency or wartime deployments. (The requester funds temporary duty and supply costs for planned events, such as non-JCS exercises and competitions.)

(9) Develops and monitors the annual Air Force-wide VI Exercise Support Plan for the Air Staff, with assistance from air components and supporting MAJCOMs. (Use criteria contained in § 813.4(e)(1) and provide equitable deployment opportunity for tasked commands' VI resources.)

(d) MAJCOM VI managers:

(1) Plan and set policy for documenting activities of operational, historical, public affairs, or other significance within their commands.

(2) Train and equip VIDOC forces to document war, contingencies, major events, Air Force and joint exercises, and weapons test.

(3) Make sure COMCAM and BVISC forces meet their wartime tasking and identify and resolve deficiencies. Refer significant deficiencies and problems and proposed resolution to HQ AFCIC/ITISM.

(4) Allow documentation of significant Air Force activities and events, regardless of their sensitivity or classification. Protect materials as the supported command directs. Safeguard classified images or handle them according to Department of Defense (DoD) Directive 5200.1, DoD Information Security Program, June 7, 1982, with Changes 1 and 2, and AFI 31–401, Information Security Program Management. The authority in charge of the event or operation approves documentation distribution.

(5) Update UTC availability in MAJCOM information systems.

(6) Assist Air Force Operations Group, in identifying the command's capability to support COMCAM and VI requirements.

(7) Provide inputs to HQ AMC/SCMV for the annual VI Executive Support Plan for JCS exercises.

(8) Make sure units that have deployable VI teams have Status of Resources and Training System (SORTS) reportable designed operational capability (DOC) statements that accurately reflect their mission and taskings.

(9) Develop and oversee measurements, such as operational readiness inspection criteria, to evaluate VI force readiness at DOC-tasked units.

§ 813.4 Combat camera operations.

(a) Air Force COMCAM forces document Air Force and air component activities.

(b) The supported unified command or joint task force commander, through the air component commander (when assigned), controls Air Force COMCAM forces in a joint environment. If an air component is assigned, the air component normally manages documentation of its operations. Air Force COMCAM and visual information support for joint operations will be proportionate to USAF combat force participation. In airlift operations, HQ AMC may be the supported command.

(c) During contingencies, exercises, and other operations, the Air Force provides its share of Unified Command headquarters COMCAM and visual information support forces for still photographic, motion media, graphics, and other VI services.

(d) COMCAM and VI forces take part in Air Force and joint exercises to test procedures and over-all readiness. COMCAM and VI forces also provide VI products to command, operations, public affairs, historical, and other significant customers.

(e) Sourcing COMCAM forces. See AFMAN 10–401 for specific procedures.

(1) When VI support teams are required, the lead wing's VI UTC deploys as primary, whenever possible. If lead wing VI support is not available, the providing command sources the requirement from other active or reserve component forces, or coordinates with other MAJCOMs for assistance.

(2) Air Force VI personnel who assist supported commands in determining COMCAM and VI requirements and sourcing consider the total USAF VI community as a resource. Planners consider employing USAF deployable VI support teams, augmentation combat documentation teams from AFSPACECOM, AETC, and ACC, as well as active and reserve COMCAM teams.

§ 813.5 Shipping or transmitting visual information documentation images.

(a) COMCAM images. Send COMCAM images to the DoD Joint Combat Camera Center, Room 5A518, Pentagon, Washington, DC 20330–3000, by the fastest means possible, following the approval procedures that on-scene and theater commanders set.

(b) Other non-COMCAM images. After use, send significant non-COMCAM images to the appropriate DoD media records center through the Air Force record center accessioning point.

(c) Identification of VIDOC materials. Clearly identify all VIDOC and COMCAM material with slates, captions, and cover stories.

§ 813.6 Planning and requesting combat documentation.

(a) Planned combat documentation. Air components identify documentation needs as early as possible in OPLANs, CONPLANs, and OPORDs and sent copies of these plans to HQ AMC/SCMV, 203 West Losey Street, Room 3180, Scott AFB, IL 62225–5223. Include the contact for planning and support.

(b) MAJCOMS may request that HQ AMC document their activities. Send information copies of requests to HQ AFCIC/ITSM, 1250 Air Force Pentagon, Washington, DC 20330–1250, and HQ AMC/SCMV. When a supporting component command operationally controls HQ AMC COMCAM units, other organizations that need support must coordinate requests with the supported command.

(c) Unplanned combat documentation. Send short notice requests to the supported operational commander as soon as possible, with information copies to HQ AFCIC/ITSM and HQ AMC/SCMO. Identify end product requirements, media formats, and deadlines.

(d) Humanitarian, disaster relief, and contingencies. Theater commanders normally task the supporting component through the Joint Operation Planning and Execution System, that in turn, requests support from HQ AMC. HQ USAF can directly task HQ AMC to document humanitarian, disaster relief, or contingency activities if it does not receive other tasking(s). In these cases, coordinate with the supported unified command.

§ 813.7 Readiness reporting.

All Air Force units assigned a DOC statement report readiness status through the SORTS process. See AFI 10–201, Status of Resources and Training System, for specific information and reporting criteria.

Janet A. Long,

Air Force Federal Register Liaison Officer.

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BILLING CODE 5001–05–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY35–1–200, FRL–6518–5]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes approval of revisions to the New York State Implementation Plan (SIP) for ozone. The State submitted this portion of the implementation plan to satisfy Clean Air Act (the Act) requirements for adoption of rules for the application of reasonably available control technology (RACT) for oxides of nitrogen (NO_X) in the entire State. The intended affect of this SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard for ozone.

DATES: Written comments must be received on or before February 4, 2000.

ADDRESSES: All comments should be addressed to:

Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal and other information are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

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I. What Action Is EPA Proposing Today?

EPA proposes approval of New York's revisions to the State Implementation Plan (SIP) which New York submitted to EPA on January 20, 1994 and April 29, 1999. The January 20, 1994 submittal includes New York's Subpart 227–2, entitled ''Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X),'' for statewide implementation of New York's NO_X RACT requirements, as well as revisions to Part 200, entitled ''General Provisions,'' Part 201, entitled ''Permits and Certificates,'' and Subpart 227–1, entitled ''Stationary Combustion Sources.'' The April 29, 1999 submittal includes amendments to Subpart 227–2. EPA proposed action on other portions (Part 200, Subpart 227–1 and Subpart 227–3) of the April 29, 1999 submittal in a **Federal Register** notice published on October 14, 1999.

II. Why Is EPA Proposing Approval of New York's SIP Revisions?

EPA has evaluated the SIP revisions that New York submitted for consistency with the Clean Air Act (the Act), EPA guidelines and EPA policy. EPA has determined that New York's SIP revisions dated January 20, 1994 and April 29, 1999 meet all requirements and, therefore, EPA proposes approval of New York's SIP revisions to implement and enforce NO_X RACT requirements statewide.

III. What Are EPA's Requirements for NO_X RACT?

The air quality planning requirements for the reduction of NO_X emissions through RACT are set out in section 182(f) of the Act. EPA describes the section 182(f) requirements in a

document, ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' published November 25, 1992 (57 FR 55620). Refer to the November 25, 1992 document for detailed information on the NO_X requirements. Also refer to additional guidance memoranda that EPA released subsequent to the NO_X Supplement. The additional guidance includes: EPA publication EPA–452/R–96–005 (March 1996) entitled ''NO_X Policy Documents for The Clean Air Act of 1990''; EPA's policy memorandum on the approval options for generic RACT rules submitted by States (November 1996); EPA's draft system-wide averaging trading guidance (December 1993); EPA's publications of ''Alternative Control Technique Documents'' which are technical documents identifying alternative controls for most categories of stationary sources of NO_X; and other related EPA policy and guidance documents.

The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

The Act requires that states include requirements, where practicable, for major stationary sources to include NO_X RACT controls by May 31, 1995. Section 182(f) of the Act requires statewide application of the NO_X RACT requirements.

IV. What Do New York's SIP Revisions Contain?

The technical support document, located in the official file, includes a full description and detailed discussion of New York's SIP submittals and revisions. The technical support document for this proposed action is available from the EPA contact listed above in the **ADDRESSES** section. The following is a summary of New York's submittals.

A. SIP Revision Dated January 20, 1994

New York held public hearings in April 1993 on its NO_X RACT plan. Following the public hearings and the comment period, New York adopted the plan on January 19, 1994. On January 20, 1994, New York submitted the plan to EPA as a revision to the SIP. EPA reviewed the plan to determine completeness in accordance with criteria set out at 40 CFR part 51. On April 15, 1994, EPA found the submittal to be administratively and technically complete. New York's January 20, 1994 SIP revision contains the following:

1. Subpart 227–2, New York's NO_X RACT regulation, as the enforceable mechanism which includes: a list of the affected sources; definitions; compliance plan requirements; control requirements including emission limits; compliance options for fuel switching, system-wide averaging, alternative RACT, and repowering; testing, monitoring, and reporting requirements;

2. State rule Part 200 which was amended to add new definitions and emission testing requirements;

3. State rule Part 201 which revises exemptions for certain sources so that those units which have the potential to be a major stationary source of NO_X are no longer categorically exempted from permit and certificate requirements;

4. State rule Subpart 227–1 which contains administrative revisions;

5. Records from the Public Hearings; and

6. The State's response to public comments.

B. SIP Revision Dated April 29, 1999

The State proposed the April 29, 1999 SIP revision on September 16, 1998, requested public comments by November 9, 1998 and held public hearings on the revision in November 1998. New York adopted the new and amended rules on January 12, 1999 and submitted the SIP revision to EPA on April 29, 1999. EPA determined the submittal administratively and technically complete on June 18, 1999. New York's SIP revision dated April 29, 1999 contains the following:

1. Amended Subpart 227–2. The Subpart 227–2 revisions include: Removal of provisions which are no longer applicable; requirements for submission of a new RACT compliance plan for sources subject to Subpart 227–3 (New York's NO_X emissions budget and allowance program); additional wording which clarifies New York's approval of low NO_X burners for mid-size boilers; corrections in the monitoring provisions to require heat input weighted averaging instead of arithmetic averaging; and requirements that New York submit individual RACT determinations to EPA as SIP revisions.

2. New Subpart 227–3 and amendments to Part 200 and Subpart 227–1. EPA has proposed approval of these three rules as published in a **Federal Register** document on October 14, 1999 (see 64 FR 55667).

3. Records from the Public Hearings;

4. The State's response to public comments.

V. What Sources Does New York's NO_X RACT Regulation Affect?

In each SIP revision, New York's Subpart 227–2 specifies that existing major stationary sources must apply RACT to control NO_X emissions. New York defines major stationary sources as facilities with the potential to emit 25 tons per year NO_X in the severe nonattainment area—the New York City metropolitan area and the lower Orange County metropolitan area—and 100 tons per year in the remainder of the State. The New York City metropolitan area includes the five counties of New York City and the counties of Nassau, Suffolk, Westchester and Rockland. The lower Orange County metropolitan area includes the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury. New York identifies these major source categories as follows: very large boilers, large boilers, mid-size boilers, small boilers, combustion turbines, internal combustion engines and other combustion sources. Subpart 227–2 provides a definition of each source category. These provisions are consistent with the Act and EPA guidance.

VI. What Exemptions Does New York's Regulation Allow?

Subpart 227–2 contains provisions allowing equipment and source operations the following four exemptions:

1. Section 227–2.1 allows for exemptions if EPA determines by May 15, 1994 that NO_X reductions would have no benefit to the net ozone air quality. New York provides that source owners, as well as the State, may petition the EPA for an exemption. This provision conforms to section 182(f) of the Act. In its April 1999 submittal, New York deleted this exemption because the May 1994 deadline is past. This deletion however, does not prevent source owners from petitioning EPA directly, at any time, since section 182(f) of the Act allows for such petitions.

2. Section 227–2.3(a)(3) allows an exemption from the requirements of Subpart 227–2 to sources that provided New York with a schedule to cease operation by May 31, 1995. This provision is acceptable to EPA since the Act requires compliance by that date.

3. Section 227–2.4(f)(3) allows an exemption to emergency power generating units and other units that operate during emergency situations less than 500 hours per year. This provision is consistent with EPA guidelines and it also limits the number of operating hours of exempted units.

4. Section 227–2.4(g) exempts owners from submitting a RACT determination for combustion installations with NO_X emissions at a de minimis level. This exemption is consistent with the Act since New York's de minimis level of emissions are well below the 25 tons per year major threshold limit.

VII. Were There Any Approvability Issues With New York's NO_X RACT Regulation and, if So, How Were They Resolved?

The following three approvability issues relate to Subpart 227–2 as submitted to EPA on January 20, 1994. There are no approvability issues with the amendments to Subpart 227–2 which New York submitted on April 29, 1999. EPA has determined that the revision has resolved all issues related to the approval of Subpart 227–2.

A. Case-by-Case RACT Determinations

Provisions within Subpart 227–2 establish a procedure for a case-by-case determination of what represents RACT for an item of equipment or source operation. This procedure is applicable if the major NO_X facility contains any source operation or item of equipment of a category not specifically regulated in Subpart 227–2. Case-by-case RACT determinations are contained in several sections of Subpart 227–2 as follows: 227–2.4(a)(2), 227–2.4(b)(2), 227–2.4(c)(1)(iii), 227–2.4(c)(1)(iv), 227–2.4(e)(3), and 227–2.4(g). EPA refers to these case-by-case provisions as generic RACT provisions.

Subpart 227–2 requires that the owners and/or operators of an affected facility submit a RACT proposal if they are not covered by specific emission limitations. The New York RACT proposal requires that owners/operators include a technical and economic feasibility analysis of the possible alternative control measures. Subpart 227–2 provides for New York to establish emission limits using a RACT determination specific to the facility.

In addressing the approvability of New York's NO_X RACT generic provisions, EPA had the following two concerns with New York's January 1994 submittal: (1) Subpart 227–2 did not require that the State submit approved case-by-case RACT determinations as SIP revisions for EPA approval, and (2) the State did not document the magnitude of NO_X emissions associated with the generic provisions and whether they were significant or not. New York needed to address both these concerns in order for EPA to propose full approval of generic provisions, instead of conditional approval.

Regarding EPA's first approvability concern, section 110 of the Act requires that a state adopt and submit, as SIP revisions after public notice and the opportunity for public comment, enforceable emission limitations and other control measures and techniques. Although NO_X RACT limitations and requirements that are included in a permit are federally enforceable, under section 110 case-by-case RACT determinations would not be federally approvable unless Subpart 227–2 required that such RACT determinations be submitted as SIP revisions for EPA approval. New York satisfied section 110 of the Act when, in its April 1999 SIP revision, New York amended Subpart 227–2 by adding section 227–2.5(e), a new compliance option, that requires the submittal of State approved case-by-case RACT determinations to EPA for approval as SIP revisions. Although section 227–2.5(e) refers to all but one of the State's case-by-case RACT determinations, New York has indicated that this omission was a mistake and that it intends to include reference to section 227–2.4(c)(1)(iii), the generic provision for mid-size boilers that use alternative fuels, in its new amendments to Subpart 227–2 which it anticipates will be proposed in its next SIP revision in the fall of 1999. New York's amended April 1999 SIP revision satisfies EPA's approvability concern with the State's January 1994 submittal.

EPA's second concern relates to whether EPA can approve Subpart 227–2's generic provisions. Generic provisions are those portions of a regulation which require the application of RACT to an emission point, but the degree of control is not specified in the rule and is to be determined on a case-by-case basis taking technological and economic factors into consideration. On November 7, 1996, EPA issued a policy memorandum providing additional guidance for approving regulations which contain these ''generic provisions.'' (Sally Shaver memorandum to EPA Division Directors, ''Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements'').

EPA policy allows for the full approval of state generic RACT rules prior to EPA approval of all major source RACT determinations provided an analysis is completed that concludes that the remaining source RACT determinations involve a de minimis level of NO_X emissions. Such an approval does not exempt the remaining sources from RACT; rather it is a de minimis deferral of the approval of these case-by-case RACT limits. In a letter dated April 27, 1999, New York provided sufficient data for EPA to evaluate the de minimis level of NO_X emissions from generic sources in the State. Given the State's data, EPA has determined that four percent of the NO_X emissions subject to RACT controls have either not yet been submitted to EPA as SIP revisions or, if submitted, have not yet been approved by EPA.[1] EPA has determined this amount to be de minimis. The four percent de minimis level includes sixteen facilities which New York is required to submit as single source SIP revisions of which seven have been submitted to EPA for approval as SIP revisions. Therefore, EPA has determined that New York's NO_X RACT regulation conforms with EPA's policy regarding the approval of generic RACT provisions or rules, thereby allowing EPA to propose approval of Subpart 227–2. Section 227–2.5(e) requires New York to submit the remaining case-by-case RACT determinations to EPA for approval as SIP revisions.

B. Certain Permitting Situation

The last sentence of section 227–2.3(a)(1) allows a facility with a valid certificate to operate or permit to construct, i.e. permits, to continue operating without implementing RACT until a new permit is issued that specifies the RACT requirements. Therefore, section 227–2.3(a)(1) potentially allows affected sources to continue operation, under valid permits, without implementing RACT by May 31, 1995 which would be a violation of the Act.

In its letter dated April 27, 1999, New York indicated that, to the best of their knowledge, every source subject to Subpart 227–2 has already received a permit. Furthermore, in the same letter, New York committed to include all emission limits and requirements of Subpart 227–2 in all applicable permits within twelve months of EPA's final approval of Subpart 227–2.

If EPA had acted on Subpart 227–2 soon after receiving the January 1994 submittal, we would have proposed disapproval because section 227–2.3(a)(1) would potentially allow some sources to operate in violation of the Act. However, since the State has confirmed in its recent letter that essentially all permits have been issued to all affected sources, a disapproval would have no practical effect at this

[1] EPA guidance provides that where the non-approved RACT requirements concern sources whose emissions represent less than 5% of the 1990 stationary source NO_X inventory, excluding utility boilers, it may be appropriate to issue a full approval of the generic RACT regulation.

time. Therefore, this issue is resolved to EPA's satisfaction.

C. Repowering Compliance Option

Section 227–2.5(c) allows a facility to comply with Subpart 227–2 by opting to repower. To do so, the owner/operator must, by December 31, 1994, enter into a federally enforceable permit wherein it commits to permanently shut down and dismantle the boiler prior to May 15, 1999 and wherein it commits to repower. This option also requires NO_X emissions from the repowered unit to meet specific emission limits that are more stringent than the State's presumptive RACT limits.

We have determined that the State's repowering compliance option does not fully satisfy EPA's guidance on repowering in that it does not require a milestone schedule for repowering nor does it require RACT measures during the interim period between May 31, 1995 and the date the facility is due to repower. These omissions are not acceptable to EPA. However, since the repowering option can no longer be applied, resolution of the discrepancies between EPA guidance and the State's regulation can have no practical effect because it's too late to enforce interim RACT or milestone scheduling requirements established by EPA guidance. The State has advised EPA that only one source in New York has opted to repower. The State's emission limitations for this option meets EPA requirements for repowering and will therefore be enforceable when EPA approves Subpart 227–2.

VIII. What Are EPA's Conclusions?

EPA proposes approval of the two SIP revisions that implement New York's NO_X RACT Program throughout the State, regardless of the nonattainment status. The first SIP revision, dated January 20, 1994, includes Subpart 227–2, and revisions to Parts 200 and 201, and Subpart 227–1. The second SIP revision, dated April 29, 1999, includes amendments to Subparts 227–2.

IX. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

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.

Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 the mandate is unfunded, EPA must 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 officials 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.

This proposed 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*,

427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual 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.

EPA has determined that the proposed approval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 21, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–151 Filed 1–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300951; FRL–6393–1]

RIN 2070–AB78

Azoxystrobin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the tolerances for residues of azoxystrobin (methyl(*E*)-2–(2–(6–(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) and its Z isomer (methyl(*Z*)-2–(2–(6–(2-cyanophenoxy)pyrimidin-4-yloxy)phenyl)-3-methoxyacrylate) in or on pistachios at 0.02 part per million (ppm) and tree nuts at 0.02 ppm. A final rule establishing tolerances for residues of azoxystrobin and its Z isomer in or on pistachios at 0.01 ppm and tree nuts at 0.01 ppm was published in the **Federal Register** of March 17, 1999 (64 FR 13106). These were the tolerances that Zeneca Ag Products had originally proposed, in pesticide petition (PP) 7F4864. Immediately following completion of this final rule, EPA received telephone comments from two parties indicating that they believed the pistachio and tree nuts tolerances were too low, considering the data submitted in support of the tolerances and the use directions on the label, and might lead to adulterated commodities even when the label use directions were accurately followed. EPA agreed to revisit the tolerances assigned to these commodities, has concluded that the commentors are correct in their concerns, and here proposes to increase the tolerances for residues of azoxystrobin and its Z isomer in or on pistachios to 0.02 ppm and in or on tree nuts to 0.02 ppm.

DATES: Comments, identified by docket control number OPP–300951, must be received by EPA on or before March 6, 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–300951 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia L. Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@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 an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufac-turing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**--Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300951. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday

through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300951 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall 2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–300951. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Statutory Findings

A. What Action is the Agency Taking?

In the **Federal Register** of March 17, 1999 (64 FR 13106) (FRL–6064–6), EPA issued a final rule pursuant to section 408(b)(2)(A)(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170), announcing the establishment of tolerances for residues of azoxystrobin and its Z isomer on several commodities, including pistachio nuts at 0.01 ppm and tree nuts at 0.01 ppm, as had been proposed by Zeneca Ag Products in tolerance petition number (PP) 7F4864. This final rule included a detailed discussion of the risk assessment and of residue and other considerations that lay behind EPA's decision to establish the tolerances. Telephone comments were received from two parties in California immediately after completion of the rule. In both cases the parties believed that the pistachios and tree nuts tolerances were too low, considering the data submitted in support of the tolerances and the use directions on the label, and might lead to adulterated commodities even when the use directions on the label were accurately followed. EPA agreed to revisit the tolerances assigned to these commodities. If the commentor's comments were substantiated, a reassessment of the risk from the use of azoxystrobin would also be necessary. The Agency has concluded that the commentors' concerns are justified and that the appropriate tolerances for these commodities are 0.02 ppm in or on pistachios and 0.02 ppm in or on tree nuts.

This document proposes to amend 40 CFR 180.507 by increasing the tolerances for combined residues of the fungicide azoxystrobin and its Z isomer, in or on pistachios at 0.02 ppm and tree nuts at 0.02 ppm.

B. What is the Agency's Authority for Taking this Action?

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

C. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for

combined residues of azoxystrobin and its Z isomer in or on pistachios at 0.02 ppm and in or on tree nuts at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances were published in 64 FR 13106 (March 17, 1999), the final rule that established the initial tolerances for residues of azoxystrobin in or on pistachios at 0.01 ppm and in or on tree nuts at 0.01 ppm. In that rule the Agency concluded that there was a reasonable certainty that no harm would result from the establishment of azoxystrobin tolerances for several other commodities. A reassessment of the risk associated with increasing the azoxystrobin tolerances for pistachios and tree nuts to 0.02 ppm demonstrated that the calculated risk increases were so small (generally at the fourth decimal place) that the risk assessment values (rounded) reported in 64 FR 13106 (March 17, 1999) were not changed. That is, the risk increase resulting from this proposed rule will be negligible. Accordingly, EPA concludes that modifying these tolerances as described will be safe for the general population, including infants and children. EPA reaffirms its specific risk findings set forth in the March 1999 azoxystrobin tolerance action.

D. International Residue Limits

There are no Codex, Canadian or Mexican Maximum Residue Limits (MRL) established for azoxystrobin for pistachios or tree nuts. Thus, harmonization is not an issue.

III. Regulatory Assessment Requirements

This proposed rule seeks to establish a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Agency has determined that this action will not have a 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, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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.'' This rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

List of Subjects in 40 CFR Part 180

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

Dated: December 16, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I shall be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. In § 180.507, the table to paragraph (a)(1), by revising the entries for pistachios and tree nuts to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

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

Commodity	Parts per million
* * *	* * *
Pistachios	0.02
* * *	* * *
Tree nuts	0.02
* * *	* * *

* * * * *

[FR Doc. 00–75 Filed 1–4–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

[RIN 0991–AB08]

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble and proposed regulatory text published in the **Federal Register** of November 3, 1999, regarding the Standards for Privacy of Individually Identifiable Health Information.

FOR FURTHER INFORMATION CONTACT: Roxanne Gibson, (202) 260–5083.

SUPPLEMENTARY INFORMATION:

Corrections

In the proposed rule 45 CFR Parts 190 through 164, beginning on page 59918

in the issue of November 3, 1999, make the following corrections.

On page 59919 in the first column, C.3. currently says, ''Right to restrict uses and disclosures.'' It should read, ''Right to request restrictions on uses and disclosures.''

On page 59919 in the first column, D.6. currently says, ''Inclusion in the accounting for uses and disclosures.'' This should be changed to say, ''Inclusion in the accounting for disclosures.''

On page 59919 in the second column, III.3. currently says, ''Accounting for uses and disclosures.'' This should be changed to say, ''Accounting for disclosures.''

On page 59919 in the second column, IV.G.5. currently says, ''Right to restrict uses and disclosures.'' It should read, ''Right to request restrictions on uses and disclosures.''

On page 59942 in the second full paragraph of the second column currently reads, ''We considered including other disclosures permitted under proposed § 164.510 within the prohibition described in this provision, but were unsure if psychotherapy notes were ever relevant to the public policy purposes underlying those disclosures. For example, we would assume that such notes are rarely disclosed for public health purposes or to next of kin. We solicit comment on whether there are additional categories of disclosures permitted under proposed § 164.510 for which the disclosure of psychotherapy notes by covered entities without specific individual authorization would be appropriate.'' That paragraph should read, ''We considered including the disclosures permitted under proposed § 164.510 within the prohibition described in this provision, but were unsure if psychotherapy notes were ever relevant to the public policy purposes underlying those disclosures. For example, we would assume that such notes are rarely disclosed for public health purposes or to next of kin. We solicit comment on whether there are categories of disclosures permitted under proposed § 164.510 for which the disclosure of psychotherapy notes by covered entities without specific individual authorization would not be appropriate.''

On page 59943 in the second full paragraph of the first column currently reads, ''We considered including other of the uses and disclosures that would be permitted under § 164.510 within the prohibition described in this provision, but were unsure if research information unrelated to treatment would ever be relevant to the public policy purposes underlying those disclosures. We solicit comment on whether there are additional categories of uses or disclosures that would be permitted under proposed § 164.510 for which the use or disclosure of such information by covered entities without specific individual authorization would be appropriate.'' That paragraph should read, ''We considered including the uses and disclosures that would be permitted under § 164.510 within the prohibition described in this provision, but were unsure if research information unrelated to treatment would ever be relevant to the public policy purposes underlying those disclosures. We solicit comment on whether there are categories of uses or disclosures that would be permitted under proposed § 164.510 for which use or disclosure of such information by covered entities without specific individual authorization would not be appropriate.''

On page 59945 in the second column, 3 currently says, ''Right to Restrict Uses and Disclosures.'' It should read, ''Right to Request Restrictions on Uses and Disclosures.''

On page 59945 in the second column, under 3 currently says, *''[Please label comments about this section with the subject: ''Right to restrict''].''* It should read, *''[Please label comments about this section with the subject: ''Right to request restrictions''].''*

On page 59946 in the first column paragraph four, the sentence, ''Limiting the right to restrict to self-pay patients also would reduce the number of requests that would be made under this provision.,'' should read, ''Limiting the right to request restrictions to self-pay patients also would reduce the number of requests that would be made under this provision.''

On page 59958 in the second line of the first column, the phrase ''(often refereed to as ''deemed status'')'' should be deleted.

On page 59987 in the second column section b. Grounds for denial of request for amendment, the first sentence currently reads, ''We are proposing that a covered plan or provider would be permitted to deny a request for amendment or correction if, after a reasonable review, the plan or provider determines that it did not create the information at issue, the information would not be available for inspection and copying under proposed § 164.514, the information is accurate and complete, or if it is erroneous or incomplete, it would not be adversely affect the individual.'' We are correcting this sentence to read, ''We are proposing that a covered plan or provider would be permitted to deny a request for amendment or correction if, after a reasonable review, the plan or provider determines that it did not create the information at issue, the information would not be available for inspection and copying under proposed § 164.514, or the information is accurate and complete.''

On page 60004 in the first column, 3. currently says, ''Accounting for uses and disclosures.'' This should be changed to say, ''Accounting for disclosures.''

On page 60004 in the first column, the preamble text under 3. currently says, ''Covered plans and providers would have to be able to provide an accounting for the uses and disclosures of protected health information for purposes other than treatment, payment, or health care operations.'' This should be changed to say, ''Covered plans and providers would have to be able to provide an accounting for disclosures of protected health information for purposes other than treatment, payment, or health care operations.''

On page 60007 in table 1, the cost of notice development for all entities in the initial or first year cost (2000) column should be 30,000,000 rather than 20,000,000.

On page 60007 in table 1, the total cost of the regulation in the initial or first year cost (2000) column should be $1,185,230,000 rather than $1,165,230,000.

On page 60012 in the second column the third full paragraph begins, ''It is also important to point out that none of the States appear to offer individuals the right to restrict disclosure of their protected health information for treatment.'' It should read, ''It is also important to point out that none of the States appear to offer individuals the right to request restrictions on disclosure of their protected health information for treatment.''

On page 60016 in the first column in the first paragraph under the heading Notice of Privacy Practices, the sentences that currently read, ''Data from the 1996 Medical Expenditure Panel Survey shows that there are approximately 200 million ambulatory care encounters per year, nearly 20 million persons with a hospital episode, 7 million with home-health episodes, and over 170 million with prescription drug use (350 million total). For the remaining four years of the five year period, we have estimated that, on average, a quarter of the remaining population will enter the system, and thus receive a notice.'' are changed to read, ''Data from the 1996 Medical Expenditure Panel Survey shows that there are approximately 200 million ambulatory care encounters per year,

nearly 20 million persons with a hospital episode, 7 million with home-health episodes, and over 170 million with prescription drug use (397 million total). For the remaining four years of the five year period, we have estimated that one-quarter to three-quarters of patients without an encounter in the first year will enter the system.''

On page 60016 in the second column, the sentence starting on line five currently reads, ''The cost for this would be $0.75 over five years.'' This sentence should read, ''The cost for health plans to issue notice would be $0.75 over five years.''

On page 60017 in table 2, the cost of notice development for all entities in the initial or first year cost (2000) column should be 30,000,000 rather than 20,000,000.

On page 60018 in table 2, the total cost of the regulation in the initial or first year cost (2000) column should be $1,185,230,000 rather than $1,165,230,000.

On page 60024 in the first column, 5 currently says, ''Right to Restrict Uses and Disclosures.'' It should read, ''Right to Request Restrictions on Uses and Disclosures.''

On page 60024 in the second full paragraph in the second column, the sentence, ''Limiting the right to restrict to self-pay patients also would reduce the number of requests that would be made under this provision,'' should read, ''Limiting the right to request restrictions to self-pay patients also would reduce the number of requests that would be made under this provision.''

On page 60037 in the first paragraph of the first column, the sentence that currently reads, ''These small businesses represent 83.8% of all health entities we have examined,'' should read, ''These small businesses represent 84.9% of all health entities we have examined.''

On page 60039 in the second column, c. currently says, ''Right to restrict.'' It should read, ''Right to request restrictions on uses and disclosures.''

On page 60041 in the first column under ''i. Documentation requirements for covered entities,'' the sentence that currently reads, ''These areas would include use within the entity; informing business partners; disclosures with and without authorizations; limitations on use and disclosure for self-pay; inspection and copying; amendment or correction; accounting for uses and disclosure; notice development, maintenance, and dissemination; sanctions; and complaint procedures.,'' should read, ''These areas would include use within the entity; informing business partners; disclosures with and without authorization; inspection and copying; amendment or correction; accounting for disclosure; notice development, maintenance, and dissemination; sanctions; and complaint procedures.''

On page 60045 in the table summarizing the PRA burden hours, the line that says, ''§ 164.515 Accounting for uses and disclosures of protected health information,'' should read, ''§ 164.515 Accounting for disclosures of protected health information.''

On page 60046 column three the heading ''Section 164.515 Accounting for Uses and Disclosures of Protected Health Information'' should be changed to ''Section 164.515 Accounting for Disclosures of Protected Health Information.''

On page 60049 in the first column, the title **Appendix to the Preamble: Sample Contact of Provider Notice** should read **Appendix to the Preamble: Sample Content of Provider Notice.**

On page 60053 in the third column, under 164.506(a)(1), (i) currently reads, ''Except for research information unrelated to treatment, to carry out treatment, payment, or health care operations;.'' It should read, ''Except for research information unrelated to treatment and psychotherapy notes, to carry out treatment, payment, or health care operations;''

On page 60055 in the third column, (3)(iii) currently reads, ''A covered entity may not condition treatment, enrollment in a health plan, or payment on a requirement that the individual authorize use of disclosure of psychotherapy notes relating to the individual.'' It should read, ''A covered entity may not condition treatment, enrollment in a health plan, or payment on a requirement that the individual authorize use or disclosure of research information unrelated to treatment or psychotherapy notes relating to the individual.''

On page 60057 in the third column, the following should be deleted because it duplicates information in the second column:

(5) *Urgent circumstances.* The disclosure is of the protected health information of an individual who is or is suspected to be a victim of a crime, abuse, or other harm, if the law enforcement official represents that:

(i) Such information is needed to determine whether a violation of law by a person other than the victim has occurred; and

(ii) Immediate law enforcement activity that depends upon obtaining such information may be necessary.

Dated: December 27, 1999.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 00–124 Filed 1–4–00; 8:45 am]

BILLING CODE 4150–04–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804 and 1852

Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend the NASA FAR Supplement (NFS) to include a requirement for contractors and subcontractors working with NASA Information Technology Systems to take certain Information Technology (IT) security related actions, to document those actions, and submit related reports to NASA.

DATES: Comments should be submitted on or before March 6, 2000.

ADDRESSES: Interested parties should submit written comments to Karl Beisel, NASA Headquarters Office of Procurement, Analysis Division (Code HC), Washington, DC 20546. Comments may also be submitted by email to *Karl.Beisel@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: KARL BEISEL, 202–358–0416, EMAIL: KARL.BEISEL@HQ.NASA.GOV.

SUPPLEMENTARY INFORMATION:

A. Background

This revision to the NASA FAR Supplement will require NASA contractors and subcontractors to comply with the security requirements outlined in NASA Policy Directive (NPD) 2810.1, ''Security of Information Technology,'' and NASA Procedures and Guidelines (NPG) 2810.1, ''Security of Information Technology,'' and to comply with additional safeguarding requirements delineated in the proposed contract clause.

Currently NASA contractors have no definitive contractual requirement to follow NASA directed policy in safeguarding unclassified NASA data held via information technology (computer systems). This proposed rule establishes these requirements in a contract clause. The clause also requires compliance with additional safeguarding requirements. These policies apply to all IT systems and networks under NASA's purview

operated by or on behalf of the Federal Government, regardless of location.

B. Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been prepared because the proposed change is not expected to have a significant economic impact on a substantial number of small business entities. The proposed changes merely formalize standard procedures in using Government computer systems and databases. It is not expected that the proposed NFS changes will have an economic impact on small entities, nor is it expected that small entities will need to significantly revise internal procedures to satisfy the NFS changes. Comments from small business entities concerning the affected NASA FAR Supplement subparts will be considered in accordance with 5 U.S.C. 601. Such comments should be submitted separately and should cite 5 U.S.C 601, *et seq.*

C. Paperwork Reduction Act

An Office of Management and Budget (OMB) approval for data collection is being sought under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1804 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1804 and 1852 are proposed to be amended as follows:

1. The authority citation of 48 CFR parts 1804 and 1852 continue to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Sections 1804.470–2, 1804.470–3, and 1804.470–4 are revised to read as follows:

1804.470–2 Policy.

(a) NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology. Security requirements for safeguarding sensitive information contained in unclassified Federal computer systems are required in the following:

(1) All contracts for information technology resources or services. This includes, but is not limited to information technology hardware, software, and the management, operation, maintenance, programming, and system administration of information technology resources to include computer systems, networks, and telecommunications systems.

(2) Contracts under which contractor personnel must have physical or electronic access to NASA's sensitive information contained in unclassified systems or information technology services that directly support the mission of the Agency.

(b) NASA information processed, stored, or transmitted by contractor equipment does not give the contractor rights to use or to redistribute the information.

1804.470–3 Security plan for unclassified Federal Information Technology systems.

When considered appropriate for contract performance, the contracting officer, with the concurrence of the requiring activity and the Center IT Security Manager, may require the contractor to submit for post-award Government approval, a detailed Security Plan for Unclassified Federal Information Technology Systems. The plan shall be required as a contract data deliverable that will be subsequently incorporated into the contract as a compliance document after Government approval. The plan shall demonstrate thorough understanding of NPG 2810.1 and NPD 2810.1 and shall include, as a minimum, the security measures and program safeguards to ensure that the information technology resources acquired and used by contractor and subcontractor personnel—

(a) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(b) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(c) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(d) Have appropriate technical, personnel, administrative, environmental, and access safeguards; and

(e) Document and follow a virus protection program for all IT resources under its control;

1804.470–4 Contract clauses.

The contracting officer shall insert the clause as stated at 1852.204–76, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts involving unclassified information technology resources.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.204–76 is revised to read as follows:

1852.204–76 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 1804.470–4, insert the following clause:

Security Requirements for Unclassified Information Technology Resources (XXX)

(a) The Contractor shall comply with the security requirements outlined in NASA Policy Directive (NPD) 2810.1, ''Security of Information Technology,'' and NASA Procedures and Guidelines (NPG) 2810.1, ''Security of Information Technology''. These policies apply to all IT systems and networks under NASA's purview operated by or on behalf of the Federal Government, regardless of location.

(b)(1) The Contractor shall ensure compliance by its employees with Federal directives and guidelines that deal with IT Security including, but not limited to, OMB Circular A–130, ''Management of Federal Information Resources'', OMB Circular A–130 Appendix III, ''Security of Federal Automated Information Resources'', and the Computer Security Act of 1987 (40 U.S.C. 1441 *et seq.*).

(2) All Federally owned information is considered sensitive to some degree and must be appropriately protected by the Contractor as specified in applicable IT Security Plans. Types of sensitive information that may be found on NASA systems that the Contractor shall have access to include, but are not limited to—

(i) Privacy Act information (5 U.S.C. 552a *et seq.*);

(ii) Resources protected by the International Traffic in Arms Regulation (22 C.F.R Parts 120–130); and

(iii) National security information.

(3) The Contractor shall ensure that all systems connected to a NASA network or operated by the Contractor for NASA conform with NASA and Center security policies and procedures.

(c) In addition to complying with any functional and technical security requirements set forth in the schedule and the clauses of this contract, the Contractor shall initiate personnel screening checks for each contractor employee requiring unescorted or unsupervised physical or electronic access to restricted or limited areas, or privileged access to NASA systems, programs, and data.

(1) The Contractor shall ensure that all such employees have at least a National Agency Check investigation. The Contractor shall submit a personnel security questionnaire (NASA Form 531, Name Check Request for National Agency Check (NAC) investigation, and Standard Form 85P, Questionnaire for Public Trust Positions, (for specified sensitive positions), and a Fingerprint Card (FD–258 with NASA overprint in Origin Block) to the Center Chief of Security for each Contractor employee

who requires screening. The required forms may be obtained from Center Chief of Security. In the event that the NAC is not satisfactory, access shall not be granted. At the option of the Government, background screenings may not be required for employees with recent or current Federal Government investigative clearances.

(2) The Contractor shall have an employee checkout process that ensures—

(i) Return of badges, keys, electronic access devices and NASA equipment;

(ii) Notification to NASA within three working days for normal terminations and by the close of business for terminations for cause to disable any user accounts or network accesses that may have been granted to the employee; and

(iii) That the terminated employee has no continuing access to systems under the operation of the Contractor for NASA. Any access must be disabled the day the employee separates from the Contractor.

(3) Granting a non-permanent resident alien (foreign national) access to NASA IT resources requires special authorization. The Contractor shall obtain authorization from the Center Chief of Security prior to granting a non-permanent resident alien access to NASA IT systems and networks.

(d) The Contractor shall ensure that its employees with access to NASA information resources receive annual IT security awareness and training in NASA IT Security policies, procedures, computer ethics, and best practices.

(1) The Contractor shall employ an effective method for communicating to all its employees and assessing that they understand any ITS policies and guidance provided by the Center Information Technology Security Manager (CITSM) and/or Center CIO (CCIO) as part of the new employee briefing process. The Contractor shall ensure that all employees represent that they have read and understand any new ITS policy and guidance provided by the CITSM and CCIO over the duration of the contract.

(2) The Contractor shall ensure that its employees performing duties as system and network administrators in addition to performing routine maintenance possess specific IT security skills. These skills include the following:

(i) Utilizing software security tools.

(ii) Analyzing logging and audit data.

(iii) Responding and reporting to computer or network incidents.

(iv) Preserving electronic evidence.

(v) Recovering to a safe state of operation.

(3) The Contractor shall provide training to employees to whom they plan to assign system administrator roles. That training shall provide the employees with a full level of proficiency to meet all NASA system administrators' functional requirements. The contractor shall have methods or processes to document that employees have mastered the training material, or have the required knowledge and skills. This applies to all system administrator requirements.

(e) The Contractor shall promptly report to the Center IT Security Manager any suspected computer or network security incidents occurring on any system operated by the Contractor for NASA or connected to a NASA network. If it is validated that there is an incident, the Contractor shall provide access to the affected system(s) and system records to NASA and any NASA designated third party so that a detailed investigation can be conducted.

(f) The Contractor shall develop procedures and implementation plans that ensure that IT resources leaving the control of an assigned user (such as being reassigned, repaired, replaced, or excessed) has all NASA data and sensitive application software removed by a NASA-approved technique. NASA-owned applications acquired via a ''site license'' or ''server license'' shall be removed prior to the resources leaving NASA's use. Damaged IT storage media for which data recovery is not possible shall be degaussed or destroyed. If the assigned task is to be assumed by another duly authorized person, at the Government's option, the IT resources may remain intact for assignment and use of the new user.

(g) The Contractor shall afford NASA access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel to the extent required to carry out a program of IT inspection and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of NASA data.

(h) The Contractor shall document all vulnerability testing and risk assessments conducted in accordance with NPG 2810.1 and any other current IT security requirements.

(1) The results of these tests shall be provided to the Center IT Security Manager. Any contractor system(s) connected to a NASA network or operated by the contractor for NASA may be subject to vulnerability assessment or penetration testing as part of the Center's IT security compliance assessment and the Contractor shall be required to assist in the completion of these activities.

(2) A decision to accept any residual risk shall be the responsibility of NASA. The Contractor shall notify the NASA system owner and the NASA data owner within 5 working days if new or unanticipated threats or hazards are discovered by the Contractor, made known to the Contractor, or if existing safeguards fail to function effectively. The Contractor shall make appropriate risk reduction recommendations to the NASA system owner and/or the NASA data owner and document the risk or modifications in the IT Security Plan.

(i) The Contractor shall develop a procedure to accomplish the recording and tracking of IT System Security Plans, IT system penetration and vulnerability tests for all NASA systems under its control or for systems outsourced to them to be managed on behalf of NASA. The Contractor must report the results of these actions directly to the Center IT Security Manager.

(j) When directed by the contracting officer, the contractor shall submit for NASA approval a post-award security implementation plan outlining how the contractor intends to meet the requirements of NPG 2810. The plan shall subsequently be incorporated into the contract as a compliance document after Government approval. The plan shall demonstrate thorough understanding of NPG 2810 and shall include as a minimum, the security measures and program safeguards to ensure that IT resources acquired and used by contractor and subcontractor personnel—

(1) Are protected from unauthorized access, alteration, disclosure, or misuse of information processed, stored, or transmitted;

(2) Can maintain the continuity of automated information support for NASA missions, programs, and functions;

(3) Incorporate management, general, and application controls sufficient to provide cost-effective assurance of the systems' integrity and accuracy;

(4) Have appropriate technical, personnel, administrative, environmental, and access safeguards; and

(5) Document and follow a virus protection program for all IT resources under its control.

(k) The Contractor shall incorporate this clause in all subcontracts where the requirements identified in this clause are applicable to the performance of the subcontract.

(End of clause)

[FR Doc. 00–181 Filed 1–4–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991228354–9354–01; I.D. No. 111299C]

RIN 0648–AM49

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2000 Specifications

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

ACTION: Proposed 2000 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 2000 fishing year for the Atlantic mackerel, squid, and butterfish (MSB) fisheries. This action also announces a proposed inseason adjustment to the 2000 mackerel joint venture processing (JVP) annual specifications, a proposal to allocate the domestic annual harvest (DAH) for *Loligo* squid into three 4-month periods, and a proposal to prohibit the use of any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size of 1⅞ in (48 mm). Regulations governing these fisheries require NMFS to publish specifications for the 2000 fishing year and management measures to assure

that the specifications are not exceeded and to provide an opportunity for public comment. The intent of this action is to fulfill these requirements and to promote the development and conservation of the MSB resources.

DATES: Comments must be received at the appropriate address or fax number (See ADDRESSES), no later than 5:00 p.m., eastern standard time, on February 4, 2000.

ADDRESSES: Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Region Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments-2000 MSB Specifications.'' Comments also may be sent via facsimile (fax) to 978–281–9135. Comments will not be accepted if submitted via e-mail or Internet. Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment and Regulatory Impact Review/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst (978) 281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, publish a proposed rule specifying the initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the affected species managed under the FMP. The regulations also specify that there will be no JVP or TALFF specified for *Loligo, Illex,* or butterfish, except that a butterfish bycatch TALFF will be specified if TALFF is specified for Atlantic mackerel. Procedures for determining the initial annual amounts are found in § 648.21.

Table 1 contains the proposed initial specifications for the 2000 Atlantic mackerel, *Loligo* and *IlleX* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1, THROUGH DECEMBER 31, 2000

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	[1] N/A	16,000
ABC	13,000	24,000	347,000	7,200
IOY	13,000	24,000	[2] 75,000	5,900
DAH	13,000	24,000	[3] 75,000	5,900
DAP	13,000	24,000	50,000	0
JVP	0	0	[4] 10,000	0
TALFF	0	0	.....	0

[1] Not applicable.
[2] OY may be increased during the year, but the total ABC will not exceed 347,000 mt
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 15,000 mt at discretion of RA.

2000 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (where MSY is maximum sustainable yield) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 metric tons (mt), the overfishing limit is F_{MSY}, F=0.45, and the target F is (F=0.25). To avoid low levels of recruitment, the FMP adopted a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (¼ B_{MSY}), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (½ B_{MSY}). Annual quotas are specified that correspond to a target F according to this control law.

Since SSB is currently above 890,000 mt, the target F is $F_{0.25}$. The yield associated with that target F is 369,000 mt. The ABC recommendation of 347,000 mt represents the F=0.25 yield estimate of 369,000 mt, minus the estimated Canadian catch of 22,000 mt. The proposed IOY for the 2000 Atlantic mackerel fishery is set equal to 75,000 mt, which is also equal to the proposed DAH plus TALFF. The specification for DAH is computed by adding the estimated recreational catch, the proposed DAP and JVP. The recreational component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey. However, for the years 1994 through 2000, response to this voluntary survey was low and did not contain projections from some large, known processors. In addition, inquiries regarding the utilization of displaced New England groundfish trawlers for possible entry into the Atlantic mackerel fishery have led the Council to recommend no change to the DAP for the 2000 fishery. While it is generally agreed that joint ventures (JV) have had a positive impact on the development of the U.S. Atlantic mackerel fishery, testimony from the processing sector of the fishery indicate that market opportunities for U.S. Atlantic mackerel are increasing. This assertion led to the Council recommendation that JVP be set at 10,000 mt in 2000 (the same JVP as 1999, but reduced from 15,000 mt in 1998 and 25,000 in 1997). The Council position is that even though JV-caught mackerel could negatively effect U.S. processing and exports, some specification of JVP is necessary to support U.S. harvesters who are currently constrained by the limited capacity of the U.S. processing sector. The Council concluded that even though JVs are necessary in the short term, the long-term policy should be to eliminate JVP to promote the development of the U.S. processing and export industry for Atlantic mackerel,

which is one of the primary objectives of the current FMP.

The Council has recommended, and NMFS proposes, a specification of 10,000 mt of JVP for the 2000 fishery with a possible increase to 15,000 mt later in the year. If additional applications for JVP are received, NMFS could increase this allocation to 15,000 mt by publishing a notification in the **Federal Register**. The Council also recommended and NMFS proposes a DAP of 50,000 mt yielding a DAH of 75,000 mt, which includes the 15,000 mt recreational component.

Zero TALFF is recommended by the Council for the 2000 Atlantic mackerel fishery, and that recommendation is proposed by NMFS. The Fisheries Act of 1995, Pub. L. 104–43, prohibits a specification of TALFF unless recommended by the Council and proposed by NMFS. In 1992, the Council based on testimony from both the domestic fishing and processing industries and analysis of nine economic factors found at § 655.21(b)(2)(ii) determined that mackerel produced from directed foreign fishing would directly compete with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that would change this determination. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to the economic and political restructuring in Eastern Europe and recent declines in the North Sea mackerel stock, has resulted in increased opportunities for U.S. producers to increase sales to new markets abroad. The U.S. industry has been successful in capturing an increased market share for mackerel in the Caribbean, North Africa, and Japan over the past decade, and a number of factors indicate that market expansion for U.S. Atlantic mackerel is likely to continue. U.S. Atlantic mackerel stock abundance remains high. Also, the low abundance of several important groundfish stocks in the Gulf of Maine, southern New England, and on Georges Bank are causing continued restrictions in fishing effort for those species. These factors increase the need for many fishermen to redirect their efforts to underutilized species. Atlantic mackerel is considered a prime candidate for innovation in harvesting, processing, and marketing.

As a supplement to the quota paper for the 1993 and 1994 fisheries, benefit-cost and sensitivity analyses were prepared by the Council and NMFS. Results of the analyses indicated that in the long term a specification of zero TALFF will yield positive benefits to the fishery and to the Nation. In its 1998, 1999 and 2000 quota papers, the Council provided additional analyses of the costs and benefits of directed foreign fishing that indicated the conclusions reached in prior analyses of zero TALFF have not changed.

The Council also recommended, and NMFS proposes, that four special conditions imposed in previous years shall continue to be imposed on the 2000 Atlantic mackerel fishery as follows: (1) JVs are allowed south of 37°30′ N. latitude, but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year, but the total should not exceed 347,000 mt; and (4) applications from a particular nation for a JV for 2000 will not be decided on until the Regional Administrator determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

Loligo

The FMP defines overfishing for *Loligo* as occurring when the catch associated with a threshold of F_{MAX} is exceeded (F_{MAX} is a proxy for F_{MSY}). When an estimate of F_{MSY} becomes available, it will replace the current overfishing proxy of F_{MAX}. Max OY is specified as the catch associated with a F_{MAX}. In addition, the biomass target is specified to equal B_{MSY}.

The most recent stock assessment for *Loligo* (the 29th Northeast Regional Stock Assessment Workshop, August 1999 (SAW–29)) concluded that the stock is approaching an overfished condition and that overfishing is occurring. More recently, NMFS' Report to Congress: Status of Fisheries of the United States (October 1999) determined that the *Loligo* stock is overfished. A production model indicated that current biomass is less than B_{MSY}, and near the biomass threshold of 50 percent B_{MSY}. There is a high probability that F exceeded F_{MSY} in 1998. The average F from the winter fishery (October to March) over the last 5 years averaged 180 percent of F_{MSY}, and F from the summer fishery equaled F_{MSY}. In addition, recent indices of recruitment are well below average.

The Magnuson-Stevens Fishery Conservation and Management Act requires the Council to take remedial action to rebuild the stock to a level that will produce MSY (B_{MSY}) given the status determination that *Loligo* is overfished. The control rule in the FMP specifies that the target F must be reduced to zero if biomass falls below 50 percent of B_{MSY}. The target F increases linearly to 75 percent of F_{MSY} as biomass increases to B_{MSY}. However, projections made in SAW–29 indicate that the *Loligo* control rule appears to be overly conservative. The projections presented demonstrate that the stock could be rebuilt in a relatively short period of time, even at F values approaching F_{MSY}. Projections indicate that the *Loligo* biomass can be rebuilt to levels approximating B_{MSY} in 3 to 5 years if F is reduced to 90 percent of F_{MSY}. The yield associated with this F (90 percent of F_{MSY}) in 2000, assuming status quo F in 1999, was estimated to be 13,000 mt based on projections from SAW–29. The establishment of 4-month periods spreads F out over the year and is expected to protect spawners. The current regulations still specify Max OY as the yield associated with F_{MAX}, or 26,000 mt.

In determining the specification of ABC for the year 2000, the Council considered the SAW–29 projections. Based on these analyses, the Council chose to specify ABC as the yield associated with 90 percent of F_{MSY}, or 13,000 mt.

Thus, the proposed Max OY for *Loligo* is 26,000 mt and the recommended ABC for the 2000 fishery is 13,000 mt, representing a decrease of 8,000 mt from the 1999 ABC of 21,000 mt. This new level of ABC is based on the recommendation of SAW–29 and is determined to be a level that would allow the *Loligo* stock to rebuild to levels at or near B_{MSY} within 3 to 5 years.

Distribution of Annual Loligo Quota by Three 4-Month Periods

The Council recommended and NMFS proposes an IOY of 13,000 mt, which is equal to ABC. Management advice from SAW–29 also made special note of the fact that yield from this fishery should be distributed throughout the fishing year. Given that the current permitted fleet historically has demonstrated the ability to land *Loligo* in excess of the quota specified for 2000, the Council recommends, and NMFS proposes, that the annual quota be sub-divided into three different 4-month quota periods. The quota would be allocated to each period based on the proportion of landings occurring in each

4-month period from 1994–1998. The directed fishery during the first two 4-month periods would be closed when 90 percent of the amount allocated to the period was landed, and a trip limit of 2,500 lb (1,134 kg) would remain in effect until that quota period ends. Any underages from 4-month period I or II will be applied to the subsequent 4-month period and overages will be deducted from 4-month period III. Similarly, the directed fishery would be closed in 4-month period III when 95 percent of the annual quota has been taken. The intent of the Council is for the fishery to operate at the 2,500 lb (1,134 kg) trip limit level for the remainder of the quota period III. The quota, allocated by 4-month periods, is shown in Table 2.

TABLE 2.—LOLIGO 4-MONTH PERIOD ALLOCATIONS

4-Month Period	Percent	Metric tons
I (Jan–Apr)	42	5,460
II (May–Aug)	18	2,340
III (Sep–Dec)	40	5,200
Total	100	13,000

In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis, so DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can process that portion of the OY that will be harvested by U.S. commercial fishing vessels, so DAP equals DAH and JVP equals zero. Since U.S. fishing vessels have the capacity to harvest and will attempt to harvest the entire OY, there is no portion of the OY that can be made available for foreign fishing, so TALFF equals zero. These determinations were made in Amendment 5 to the FMP. The proposed values of IOY, DAH, and DAP equal 13,000 mt for the 2000 *Loligo* fishery, and represent a reduction of 8,000 mt from the final 1999 *Loligo* IOY/DAH/DAP specifications.

Loligo Gear Requirements

In addition to the quota specifications summarized here, the Council also recommended, and NMFS proposes, that additional language be added to the regulations pertaining to gear requirements in the *Loligo* fishery. Industry members testified before the Council that some fishermen may be rigging the inner portion of the codends used in the *Loligo* fishery in a manner that alters the intended selective properties of the regulated mesh size (1⅞ in (48 mm)) by using an inner codend of substantially greater circumference than the outer portion of the codend (*i.e.*, the strengthener). The Council recommended, and NMFS proposes, to remedy this situation by adding the following language to the mesh restriction section of the regulations governing the *Loligo* fishery: ''The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.'' The addition of this language should greatly improve enforcement of the mesh requirements in the *Loligo* fishery.

Illex

The Max OY for *Illex* squid is 24,000 mt. The Council recommended, and NMFS proposes, an ABC of 24,000 mt, which is equal to the quota associated with F_{MSY}. Amendment 8 also changed the definitions of overfishing for *Illex* squid. The approved overfishing definition for *Illex* is, ''Overfishing for *Illex* will be defined to occur when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded * * *. Maximum OY will be specified as the catch associated with a fishing mortality rate of F_{MSY}. In addition, the biomass target is specified to equal B_{MSY}. The minimum biomass threshold is specified as ½ B_{MSY}.''

The most recent assessment of the *Illex* stock (SAW–29) concluded that the stock is not in an overfished condition and that overfishing is not occurring. The previous assessment, the 21st Northeast Regional Stock Assessment (1996), had concluded that the U.S. *Illex* stock is fully-exploited. Due to a lack of adequate data, the estimate of yield at F_{MSY} was not updated in SAW–29. However, an upper bound on annual F was computed for the U.S. exclusive economic zone (EEZ) portion of the stock based on a model that incorporated weekly landings and relative fishing effort and mean squid weights during 1994–1998. These estimates of F were well below the biological reference points. Current absolute stock size is unknown and no stock projections were done in SAW–29.

Since data limitations did not allow an update of yield estimates at the threshold and target F values, the Council recommended, and NMFS proposes, that the specification of MAX OY and ABC be specified at 24,000 mt (yield associated with F_{MSY}). Under this option, the directed fishery for *Illex* would remain open until 95 percent of ABC is taken (22,800 mt). When 95 percent of ABC is taken, the directed fishery would be closed and a 5,000-lb (2,268-kg) trip limit would remain in effect for the remainder of the fishing year. As in the case of *Loligo*, Amendment 5 eliminated the possibility of JVP and TALFF for the *Illex* fishery.

Butterfish

The FMP sets OY for butterfish at 16,000 mt. Based on the most current stock assessment, the Council recommends, and NMFS proposes, an ABC of 7,200 mt for the 2000 fishery, representing no change in the specifications since 1996. Commercial landings of butterfish have been low at 3,489 mt, 2,798 mt, and 1,964 mt for the 1996 through 1998 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market size fish have caused severe reductions in the supply of butterfish. Discard data from the offshore fishery are lacking and high discard rates could be reducing potential yield.

The Council recommended and NMFS proposes an IOY and DAH for butterfish of 5,900 mt. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. However, since the Council recommended, and NMFS proposes, no TALFF for Atlantic mackerel, no bycatch TALFF is necessary for butterfish.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

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

The Council prepared an IRFA in section 5.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows:

The IRFA examines the proposed specifications and several alternatives. The Council has identified the number of potential fishing vessels in the 2000 fisheries as 443 vessels fishing for *Loligo*, 77 vessels fishing for *Illex*, 443 vessels fishing for butterfish, and 1980 vessels fishing for Atlantic mackerel. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. For Atlantic mackerel, the proposed ABC specifications of 347,000 mt and DAH of 75,000 mt, and the proposed *Illex* squid

DAH specifications of 24,000 mt, and the proposed butterfish DAH specifications of 5,900 mt, represent no constraint on vessels in these fisheries. There exists a surplus between the proposed specifications and the actual landings for these species in recent years. Absent a constraint on the fisheries, no impacts on revenues are expected. The proposed reduction in the *Loligo* quota in 2000 from 21,000 mt to 13,000 mt would represent an 18-percent reduction in landings compared to the average last three (1996–1998) landings. This reduction may result in a 5–10 percent revenue reduction (all species combined) for 121 of 443 vessels that reported landing *Loligo* in 1997. The remaining vessels (322) are expected to experience a reduction of less than 5 percent.

The alternative action for Atlantic mackerel would be to set the 2000 specifications at the same level as 1999 (ABC=382,000 mt). Although it was rejected as inconsistent with the FMP, this alternative would also place no constraints, and consequently no revenue impacts, on the fishery. The second alternative for mackerel was to set ABC at the long-term potential catch, or 134,000 mt. This alternative was found inconsistent with the FMP and would not impact the IOY specifications. The last alternative considered for mackerel included the elimination of JVP, which would lower the specification of IOY to 65,000 mt, also far in excess of recent landings. Both of these alternatives would not constrain the fishery and were determined to have no impact on revenues of participants in this fishery.

For *Loligo*, an alternative ABC, DAH, DAP, and IOY of 11,700 mt would represent a 26 percent reduction in 1996–1998 average landings. Under this scenario 161 of the 443 impacted vessels would experience revenue reductions of greater than 5 percent. The remaining 282 vessels would experience less than 5 percent reduction in revenue.

For *IlleX*, an alternative Max OY, ABC, IOY, DAH, and DAP of 30,000 mt far exceed recent landings in this fishery. Therefore, there would be no constraints, and thus no revenue reductions, associated with these specifications. For butterfish, the Council considered a DAH, OY, and Max OY of 16,000 mt and a DAH and OY of 10,000 mt. Since both such specifications would be hazardous to the health of the stock, the Council rejected these alternatives that would also not constrain or impact the industry.

This rule also proposes to prohibit the use of any combination of mesh or liners in the *Loligo* fishery that effectively decreases the mesh size below the minimum mesh size of 1⅞ in (48 mm). The addition of language to the mesh restriction section of the regulations governing the *Loligo* fishery will remedy the present situation of rigging the inner portion of the codends in a manner that alters the intended selective properties of the regulated mesh size by using an inner codend of substantially greater circumference than the outer portion of the codend. This prohibition should greatly improve enforcement of the mesh requirements in the *Loligo* fishery compared with the status quo alternative and will not adversely impact any small entity that is not circumventing the mesh size regulations by using a larger codend.

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no recordkeeping or reporting requirements associated with this rule.

The RIR/IRFA is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 29, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.21, paragraph (e) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(e) *Distribution of Annual Commercial Quota.* (1) Beginning January 1, 2000, a commercial quota will be allocated annually into three periods, based on the following percentages:

Period	Percent
I—January-April	42
II—May-August	18
III—September-December	40

(2) Beginning January 1, 2000, any underages of commercial period quota landed from Periods I and II will be applied to Period III and any overages of commercial quota landed from Periods I and II will be subtracted from Period III.

3. In § 648.22, paragraph (a) is revised as follows:

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that DAH will be attained for mackerel, the Assistant Administrator shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo* when 90 percent is harvested in Periods I and II, and when 95 percent of DAH has been harvested in Period III. The Assistant Administrator shall close the directed fishery in the EEZ for *IlleX* or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

4. In § 648.23, paragraph (c) is revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

* * * * *

[FR Doc. 00–119 Filed 1–4–00; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 65, No. 3

Wednesday, January 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Public Notice of Comment Period for Proposed Yields for Revision of the ''Food Buying Guide for Child Nutrition Programs''

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that beginning December 15, 1999 the Food and Nutrition Service (FNS) will post proposed yields on the Healthy School Meals Resource System at http://schoolmeals.nal.usda.gov:8001. The yields are for both new foods to be included in the next revision of the ''Food Buying Guide for Child Nutrition Programs'' (FBG) and for currently listed foods reexamined using the most current appropriate food testing technology. FNS is posting this yield information so that interested members of the public, including industry representatives, can review and comment on the findings prior to finalizing the yields for the next revision of the FBG.

DATES: Comments must be received on or before April 15, 1999 to be assured of consideration.

ADDRESSES: Address comments on proposed yields or yield research on specific items to Lori French, Chief, Nutrition Promotion and Training Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Janice Fabina at (703) 305–2621.

SUPPLEMENTARY INFORMATION:

Background

The Food and Nutrition Service (FNS), USDA, administers various child nutrition programs including the National School Lunch Program, the School Breakfast Program, the Child and Adult Care Food Program, and the Summer Food Service Program. Program guidance and training materials prepared must be provided to food service personnel and constantly updated in order to improve the quality of the food served and to promote the efficient management of nutrition assistance programs. An integral component of this guidance is laboratory-based yield research on institutional packed foods that are used to prepare meals in conformance with program regulations.

One of the basic program aids prepared by FNS is the ''Food Buying Guide for Child Nutrition Programs,'' Program Aid No. 1331 (Food Buying Guide). It is used extensively in several areas related to child nutrition programs:

Food Service Personnel—The Food Buying Guide provides information for planning and calculating the required quantities of food to be purchased and used by school food authorities and other institutions participating in child nutrition programs. It is the cornerstone upon which meals are planned, prepared, and analyzed for meeting food-based meal pattern requirements for each component of a federally reimbursable meal. The Food Buying Guide defines the number of servings (i.e., yield) per purchase unit for most foods used in these programs. These yields are used in recipes to ensure that meal requirements for child nutrition programs are being met. Precise data is essential. In addition, it is an important tool to enable school food authorities using a food-based menu planning system to comply with the *Dietary Guidelines for Americans* as required by section 9(f)(1) of the National School Lunch Act, 42 U.S.C. 1758(f)(1).

Child Nutrition (CN) Labeling—The Food Buying Guide is also used in establishing a commercial product's contribution toward meal pattern requirements in the CN label review process. Section 4(d) of the CN labeling regulations found in Appendix C to 7 CFR parts 210, 220, 225, and 226 states, ''Yields for determining the product's contribution toward meal pattern requirements must be calculated using the Food Buying Guide for Child Nutrition Programs (Program Aid Number 1331).''

Therefore, the Food Buying Guide is a valuable tool for members of the food industry serving child nutrition programs. Another use of the Food Buying Guide in the CN labeling program is in determining component yields for new products containing foods not listed in the Food Buying Guide. If ingredients are not contained in the Food Buying Guide, they can be compared to similar ingredients in the Food Buying Guide. If a close match can be found, a yield can be assigned to the new product without having to do extensive studies on the product to determine a yield.

Child Nutrition Database—Finally, the Food Buying Guide provides an essential data set in the Child Nutrition Database. This database is required by 7 CFR 210.10(i)(4) of the National School Lunch Program and 7 CFR 220.8(e)(4) o f the School Breakfast Program to be used in USDA-approved software programs for school food authorities using nutrient standard menu planning systems. The database has incorporated the Food Buying Guide so that there is on-line access to yield data, i.e., information for ready-to-serve, ready-to-cook, cooked, or otherwise prepared food that would be obtained from a specific market unit of food as purchased. This food yield data provides the user with information necessary for the ''Yield Factor Method'' of nutrient analysis of school recipes and menu plans. This is critical for accurate analysis and to enable schools to plan meals that comply with the established nutrient standards for school meals.

The last laboratory research incorporated into the Food Buying Guide was completed in May, 1980. The Food Buying Guide has since received minor revision in 1984, and again in 1990 and 1995. Because food technology and processing have changed so dramatically in the last fifteen years, it is now imperative to update the current edition. USDA contracted with the U.S. Army's Research, Development, and Engineering Center's Armed Forces Recipe Team in Natick, Massachusetts to conduct new research on the yield of approximately 400 new foods for inclusion in the Food Buying Guide and to review the yield information of 200 foods currently found in the publication. Yield information was gathered for basic ingredients only, not

commercially processed products such as chicken and beef patties or combination items such as lasagna, chili, or macaroni and cheese, etc.

Methodology

The yield information was gathered by using various types of cooking and processing equipment. The equipment and cooking procedures commonly used in school food service preparation were determined in a study conducted by the National Food Service Management Institute in March 1996: Issues Related to Equipment and the Dietary Guidelines for Americans. Use of this study ensured that the resultant yields would be consistent with school food service preparation methods. Careful documentation records were kept by the contractor concerning the equipment used and the preparation/processing methods employed in using this equipment.

This laboratory-based yield research of institutional packed food was conducted by the contractor using specified quantities of product. Final data includes net weight and volume, drained solids weight and volume, drained liquids weight and volume, and weight/volume ratios for canned fruits and vegetables. Data for meat/poultry is percent yields based on the state of the materials (frozen, thawed, trimmed, cooked, sliced), with skin, gristle, and bone removed. Factors for fresh fruits and vegetables addresses the end-stage of the food (peeled, pared, husked, hulled, cored), as well as weight/volume ratios for diced, cubed, sliced, and chopped; the size of the cut will be specified.

Interested parties may obtain the complete, detailed methodology for any of the food categories (meat/meat alternates, vegetables and fruits, grains/breads, milk/dairy products and other foods) upon written request to FNS at the address in the **ADDRESSES** section of this notice.

Review of Proposed Yields

The Food and Nutrition Service welcomes input from industry and other interested members of the public in the revision of the Food Buying Guide. Modifications to the Food Buying Guide could determine how a company markets their product, develops new products, or it could even cause processing procedures or formulations to change. Because the resultant yield data will have implications for industry in future marketing and new product development, FNS believes it is imperative that interested persons from appropriate industries review the findings. FNS has posted the new yield information on the Healthy School Meals Resource System's web site at http://schoolmeals.nal.usda.gov:8001. Interested parties should review the web site to check for the complete set of new information. FNS encourages all interested parties, especially affected industry representatives, to submit written comments indicating concerns about the proposed yields. Any comments disagreeing with the yield findings should include supporting data. Written comments should be sent to FNS at the address in the ADDRESSES section of this notice by April 15, 1999. FNS will consider all timely comments prior to publishing the revised Food Buying Guide.

Yield Research on Specific Items

Interested parties may also submit requests for yield research on specific food items by sending such requests, in writing, to the address listed in the **ADDRESSES** section of this notice.

Food Buying Guide Revision

Note that the yield information to be published on the web site will not be incorporated into the Child Nutrition Database nor may it be relied upon for CN Labeling or meal planning purposes until the final Food Buying Guide revisions are made. The Food and Nutrition Service does not expect to finalize the yield data until late spring 2000. The final Food Buying Guide is expected to be printed and distributed in late fall 2000. It will be distributed in printed copy to all school food authorities and other institutions participating in the child nutrition programs. Printed copies will be made available for sale. It will also be made available on the Internet.

Authority: The authority citation for 7 CFR part 210 continues to read as follows: 42 U.S.C. 1751–1760, 1779.

Dated: December 23, 1999.

Samuel Chambers, Jr.

Administrator, Food and Nutrition Service.

[FR Doc. 00–204 Filed 1–4–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Coeur d'Alene River Ranger District Small Sales EIS, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of utilizing timber harvest in numerous small, specific areas of the Coeur d'Alene River Ranger District to salvage merchantable timber in stands damaged by ice storms, insect infestation and disease, and to reduce the level of fire risk to the National Forest and to private lands adjacent to National Forest lands.

DATE: Comments concerning the scope of the analysis should be received in writing by January 31, 2000.

ADDRESSES: Send written comments to Coeur d'Alene River Ranger District, 2502 East Sherman Avenue, Coeur d'Alene, Idaho, 83814–5899.

FOR FURTHER INFORMATION CONTACT: Bob Rehnborg or Dennis Adams, Project Team Leaders, (208) 769–3000.

SUPPLEMENTARY INFORMATION: The stands being considered for treatment are widely scattered across the Coeur d'Alene River Ranger District and are declining due to damage incurred during recent ice storms and the resulting Douglas-fir bark beetle infestation. To date, specific areas being considered for treatment are located in the Canfield, Fernan Creek, Lancaster Creek, Blue Creek, Rantenan Creek and Thompson Creek watersheds on the west side of the district; and in the Shoshone Creek, Falls Creek, Beaver Creek, Trail Creek, West Fork Downey Creek, and Pony Gulch watersheds on the east side of the district, as well as in several right-of-way areas. Some of the stands adjacent to private ownership are currently managed for their old-growth characteristics. Adjacent landowners have expressed concern with the increased fire risks associated with the amount of dead or dying timber in these areas. Several stands are within an inventoried roadless area. Other specific treatment areas and treatment methods will be identified during scoping.

The proposal will include the following possible actions: timber harvest, prescribed fire, and tree planting. Timber harvest could be accomplished through the use of a combination of methods, including: horse logging, helicopter yarding, skyline yarding or tractor yarding. The scope of this analysis is limited to activities related to the purpose and need, and measures necessary to mitigate the effects these activities may have on the environment. The decision will identify if, when, how and where the schedule activities to meet these goals.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to:

(1) Identify additional potential issues;

(2) Eliminate minor issues or those issues which have been covered by a relevant previous environmental analysis;

(3) Identify additional treatment areas;

(4) Identify additional alternatives to the proposed action;

(5) Identify potential environmental effects of the proposed action and alternatives (*i.e.* direct, indirect and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in March 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 of the draft EIS in the **Federal Register.**

In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies, the Coeur d'Alene Tribe, and other individuals or organizations that may be interested in or affected by the proposed action.

The USDA Forest Service is the lead agency for this proposal. District Ranger Susan Jeheber-Matthews is the responsible official.

The Forest Service believes it is important at the early stage 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. *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 on the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 17, 1999.

Susan Jeheber-Matthews,

District Ranger.

[FR Doc. 00–195 Filed 1–4–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On December 23, 1999, the Canadian Cattlemen's Association filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final injury determination made by the International Trade Commission, respecting Live Cattle from Canada. This determination was published in the **Federal Register** (64 FR 66,197) on November 24, 1999. The NAFTA Secretariat has assigned Case Number USA–CDA–99–1904–07 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on December 23, 1999, requesting panel review of the final injury determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is January 24, 2000);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is February 7, 2000); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 29, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–217 Filed 01–04–00; 8:45 am]

BILLING CODE 3510–GT–U

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Requirements for Buckles on Child-Restraint Systems on Various Children's Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (HP–00–1) requesting that the Commission develop requirements for buckles used on child-restraint systems on such products as strollers, high chairs, changing stations, and shopping carts. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by March 6, 2000.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, MD 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned ''Petition HP–00–1, Petition for Child-Restraint Systems.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from John A. Galbreath requesting that the Commission issue a standard for buckles used on child-restraint systems on such products as strollers, high chairs, changing stations, and shopping carts. The petitioner relies on his own experience, CPSC's NEISS data, and a recent research study on stroller buckles to conclude that child-restraint systems on various children's products are ineffective. He states that these buckles are not sufficiently child-resistant and can be defeated by children. The petitioner requests that the Commission issue a standard requiring that such buckles meet a test for child-resistance. The Commission is docketing the correspondence as a petition under provisions of the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: December 29, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–190 Filed 1–4–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Extension of Cancer Treatment Clinical Trials Demonstration Project.

SUMMARY: This notice is to advise interested parties of an extension of a demonstration project in which the DoD provides CHAMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Institutes of Health, National Cancer Institute (NCI) clinical trials. Participation in these clinical trials will improve access to promising cancer prevention and therapies for CHAMPUS eligible beneficiaries when their conditions meet protocol eligibility criteria. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the prevention and treatment of cancer. At this time, there is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trials. Extending the demonstration until the termination of the NCI/DoD Interagency Agreement will allow sufficient time for patient accrual to clinical trials and collection of data, which allows for comprehensive economic analysis. This demonstration also affects TRICARE, the managed health care program that includes CHAMPUS. This demonstration project is under the authority of 10 U.S.C., section 1092, and expires upon the termination of the NCI/DoD Interagency Agreement.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: COL Karen Ferguson, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–3628.

A. Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an expansion of an existing demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration purpose is to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The January 24, 1996, notice anticipated the possibility of extending the demonstration.

The NCI trials program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer prevention and therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network which includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principoal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer prevention and treatment, the Department expended its breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trials. It further expanded the Interagency Agreement to cover cancer prevention clinical trials on June 21, 1999. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer prevention and treatment therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities. While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that this increased access to innovative cancer prevention and cancer treatment therapies will occur at a cost comparable to that which the Department has experienced in paying for conventional therapies under the standard CHAMPUS program.

Dated: December 29, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–174 Filed 01–04–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Comments on Department of Defense Intent To Make Decisional Documents of Discharge Review Boards (DRB) and Correction Boards (CB) Available in a Searchable, On-Line Database, and To Discontinue Indexing in Hardcopy Form

AGENCY: Deputy Under Secretary of Defense for Program Integration, DoD.

ACTION: Notice.

SUMMARY: This notice is published to comply with the Electronic Freedom of Information Act Amendments of 1996. The Department of Defense intends to provide on-line access to decisional documents of DRBs and CBs in a computer database, which will be searchable by key words. All decisional documents issued after October 1998 will be available on this searchable on-line database accessible via the Internet. Decisional documents issued prior to October 1998 will not be included in the database, but will continue to be available in microfiche in the DRB/CB reading room. Hard copy indices to these older decisional documents will continue to be available as well. However, the DRB/CB reading room will no longer create and make available to the public hard copy indices for decisional documents issued after October 1998, since these documents will be available and searchable on-line. This notice is to provide interested parties with the opportunity to submit written comments on the proposed changes. Implementation of the proposed changes will require application to the United States District Court for the District Columbia, since the changes would effect indexing requirements contained in a settlement order issued in Urban Law Institute of Antioch College, Inc. v. Secretary of Defense, Civ. No. 76–0530 (D.D.C.) (Stipulation of Dismissal, Jan. 31, 1977) (Order and Settlement Agreement, July 30, 1982).

DATES: Comments are due no later than May 4, 2000.

ADDRESSES: Forward comments to the Office of the Under Secretary of Defense for Personnel & Readiness, Program Integration, Legal Policy, 4000 Defense Pentagon, Washington, D.C. 20301–4000.

FOR FURTHER INFORMATION CONTACT: Lt Col Karen J. Kinlin, OUSD (P&R) PI–LP, 4000 Defense Pentagon, Room 4C763, Washington, D.C. 20301–4000; telephone (703) 697–3387; facsimile (703) 693–6708.

SUPPLEMENTARY INFORMATION: The Electronic Freedom of Information Act Amendments of 1996, Pub. L. No. 104–231, 110 Stat. 3048, became effective on October 2, 1996. These amendments required agencies to use electronic information technology to enhance the availability of reading room records. The Amendments embody a strong preference that records be made available on-line whenever possible. To satisfy this requirement, a web-site for the DoD Electronic Reading Room for Corrections and Discharge Review Boards is being created which will contain all decisional documents of the Military Departments' Correction Boards and Discharge Review Boards after October 1998. The web site will include the search engine DocuShare that will allow members of the public to search decisional documents by keyword.

The current hard copy indexing system will still be available for documents prior to October 1998 which will be retained on microfiche. However, at the end of this process, when all the boards have posted their up-to-date decisional documents, the DoD plans to discontinue using the current hard copy index system prescribed in DoD Directive 1332.28, and instead will rely on the web site's search capability. The DocuShare search engine will enable applicants and/or their representatives to find those cases that may be similar to theirs and that indicate the circumstances under which or reasons why the DRB or the Secretary concerned granted or denied relief.

Decisional documents issued prior to October 1998, and not accessible on the web site, would still be available on microfiche in the Armed Forces Discharge Review/Correction Board Reading Room and would retain the old indexing system.

Because the corrections boards also use a hard copy index system, DoD proposes that the proposal to replace the current indexing system with the electronic search engine will also include decisional documents of the Boards for Correction of Military Records. Microfiche correction board documents available in the reading room will continue to be available and will continue to be searchable by means of existing hard copy indices.

We believe the changes outlined above will significantly improve public access to DRB/CB decisional documents, as well as the individual's ability to search for and identify documents of interest to him or her.

Dated: December 29, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–175 Filed 01–04–00; 8:45 am]

BILLING CODE 5001–10–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 6, 2000.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used

in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1999.

William Burrow,

Leader Information Management Group Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Safe & Drug Free School (SDFS) Recognition Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 300 Burden. Hours: 7,200.

Abstract: The SDFS Recognition Program was established to recognize public and private schools that have demonstrated exemplary practices in creating safe and orderly learning environments. The program focuses on research-based principles, collaboration with partners at the Federal, State, and local levels, (both public and private) and effective diffusion of knowledge about what works to prevent drug use and violence among youth.

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.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 426–9692 or via her internet address Kathy Axt@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. 00–222 Filed 1–4–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 6, 2000.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 30, 1999.

William Burrow,

Leader Information Management Group Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart K—Cash Management.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 6,576.

Burden Hours: 1,218,718.

Abstract: These regulations comprise the existing provisions of the Student Assistance General Provisions guidance regarding cash management. Subpart K governs the cash management regulations as authorized by section 487 of the Higher Education Act (HEA), and is intended to clarify and consolidate current policies and requirements, and make necessary changes in the regulatory framework for the Secretary to improve significantly the delivery of Title IV, HEA program funds to students and institutions.

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.

Written comments or 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. 00–223 Filed 1–4–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Board on Tribal Colleges and Universities; Meeting

AGENCY: President's Advisory Board on Tribal Colleges and Universities.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the first meeting of the President's Advisory Board on Tribal Colleges and Universities and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: February 11, 2000, from 9 a.m. to 5 p.m., and February 12, 2000, from 8:30 a.m. to 4:00 p.m.

LOCATION: The Yorktown Room on February 11th, and the Valley Forge

Room on February 12th, Hyatt Regency on the Capitol Hill, 400 New Jersey Avenue, NW, Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Carrie Billy, Executive Director, President's Advisory Board on Tribal Colleges and Universities, U.S. Department of Education, 4050 MES, 330 C Street, SW, Washington, D.C. 20202–7594, Telephone: 202.260.5714.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13021 (October 19, 1996) to provide advice regarding the progress made by federal agencies toward fulfilling the purposes and objective of the order. The Board shall also provide recommendations to the President and the Secretary of Education at least annually on ways Tribal Colleges can:

(1) Use long-term development, endowment building, and master planning to strengthen institutional viability;

(2) Use the federal and private sector to improve financial management and security, obtain private sector funding support, and expand and complement federal education initiatives;

(3) Develop institutional capacity through the use of new and emerging technologies offered by the federal and private sectors;

(4) Enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) Help achieve National Education Goals and meet other high standards of education accomplishment.

The meeting agenda will include: Strategic Planning discussions; information sharing among Presidentially appointed members; and organizing the Presidential Advisory Board on Tribal Colleges and Universities into cluster committees and developing their agenda. The general public is encouraged to attend. However, space is limited and is available on a first come, first served basis.

A summary of the activities of the meeting and other related materials, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at White House Initiative on Tribal Colleges & Universities, U.S. Department of Education, 4050 MES, 330 C Street, SW, Washington, DC from 9:00 a.m. to 5:30 p.m.

Dated: December 29, 1999.

Robert D. Muller,

Acting Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 00–182 Filed 1–4–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Additional Public Hearings for Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of additional public hearings.

SUMMARY: On August 13, 1999, the U.S. Department of Energy (DOE) published a Notice of Availability (64 FR 44200) of its *Draft Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS–0250–D) and announced a 180-day public comment period ending February 9, 2000. Subsequently, 16 public hearings were announced on September 9, 1999 (64 FR 48996), and one additional hearing was announced on October 12, 1999 (64 FR 55260). DOE is now announcing three additional public hearing locations: Lincoln, NE; Cleveland, OH; and Chicago, IL. To schedule a time to provide oral comments during these hearings, please call 1–800–967–3477. Persons wishing to provide oral comments who have not registered in advance may register at the hearings.

DATES: The three additional public hearings will be held from 11:00 a.m. until 2:00 p.m. and from 6:00 p.m. until 9:00 p.m. on the following dates at the following locations: January 24, 2000, in Lincoln, NE; January 28, 2000, in Cleveland, OH; and February 1, 2000, in Chicago, IL.

ADDRESSES: The three additional public hearings will be held at the following locations:

Lincoln, NE, Ramada Inn—Airport, 1101 West Bond Street, Lincoln, Nebraska 68521

Cleveland, OH, Holiday Inn Lakeside City Center, 1111 Lakeside Avenue, Cleveland, Ohio 44114

Chicago, IL, Hotel Intercontinental, 505 North Michigan Avenue, Chicago, Illinois 60611

FOR FURTHER INFORMATION CONTACT: Ms. Wendy R. Dixon, EIS Program Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739. Copies of the document may also be requested by telephone (1–800–967–3477) or over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov,* under the listing ''Environmental Impact Statement.''

Issued in Washington, DC, December 29, 1999.

Ivan Itkin,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 00–192 Filed 1–4–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC99–567–001 FERC–567]

Information Collection Submitted for Review and Request for Comments

December 29, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the office of management and budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 13, 1999 (64 FR 49473) and has made this notation in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before February 4, 2000.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson

Place, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc. fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–567 ''Annual Reports of System Flow Diagrams and System Capacity.''

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0005. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a change to the reporting burden as a result of an increase in the number of companies who submit reports to the Commission. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Natural gas Act (NGA) (Pub. L. 75–688), and Titles III, IV, and V of the Natural Gas Policy Act (PUb. L. 95–621). The information collected under FERC–567 is used by the Commission to obtain accurate data on pipeline facilities and the peak day capacity of these facilities. Specifically, FERC–567 data is used in determining the configuration and location of installed pipeline facilities; evaluating the need for proposed facilities to serve market expansions; determining pipeline interconnections and receipt and delivery points; and developing the evaluating alternatives to proposed facilities as a means to mitigate environmental impact of new pipeline construction. FERC–567 also contains valuable information that can be used to assist federal officials in maintaining adequate natural gas service in times of national emergency. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 260.8 and 284.12.

Respondent Description: The respondent universe currently comprises on average, 91 respondents.

6. *Estimated Burden:* 12,724 total burden hours, 91 respondents, 1 response annually, 81.58 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 12,724 hours ÷ 2,080 hours per year × $109,889 per year = $672,225, average cost per respondent = $7,387.00.

Statutory Authority: Sections 4, 5, 6, 7, 9, 10(a) and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688), and Title III, Sections 301(a)(1), 3030(a), 304(d) Title IV, Sections 401 and 402, and Title V, Section 508 of the Natural Gas Policy Act (Pub. L. 95–621).

David P. Boergers,

Secretary.

[FR Doc. 00–169 Filed 01–04–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos ER99–3531–000 and ER99–4384–000]

Southern Company Services, Inc.; Notice of Informal Settlement Conference

December 29, 1999.

Take notice that an informal conference will be convened in this proceeding on January 5 and 6, 2000, at 10:00 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The Conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 3895.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Theresa J. Burns at (202) 208–2160.

David P. Boergers,

Secretary.

[FR Doc. 00–170 Filed 01–04–00; 8:45 am]

BILLING CODE 6717–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–702–000, *et al.*]

Sierra Pacific Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

December 27, 1999

Take notice that the following filings have been made with the Commission:

1. Sierra Pacific Power Company

[Docket No. ER00–702–000]

Take notice that on December 20, 1999, Sierra Pacific Power Company (Sierra), tendered for filing an amendment to the General Transfer Agreement with the Bonneville Power Administration filed with the Commission on November 30, 1999.

Sierra states that an incorrect version of Attachment 1 (Exhibit F) was included in the original filing. The corrected Attachment 1 accurately reflects the reduction in the monthly facilities charge as described in the original filing.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California, the Nevada Bureau of Consumer Protection and Bonneville Power Administration.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–814–000]

Take notice that on December 16, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 1 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply also tenders for filing Notice of Succession to adopt, ratify and make its own, in every respect, all applicable rate schedules and supplements thereto previously filed with the Federal Energy Regulatory Commission by Allegheny Energy Supply Company, effective November 18, 1999.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 19, 1999 to Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power).

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Ameren Services, Co., on behalf of Ameren Generating Company, and Marketing Company

[Docket No. ER00–816–000]

Take notice that on December 20, 1999, Ameren Services, Co., tendered for filing supplemental information to its December 16, 1999, filing of an order of the Illinois Commerce Commission proceeding Illinois Commerce Commission v. Central Illinois Public Service Company, ICC Docket No. 99–0398, Order issued October 12, 1999, which had been omitted inadvertently from its December 16, 1999 application.

Ameren Services further noted that its correct corporate name is Ameren Services Co., not Ameren Services, Inc.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER00–844–000]

Take notice that on December 17, 1999, Western Resources, Inc., tendered for filing notice that effective January 1, 2000, Service Schedule T/WSM–10/89 is to be canceled. Western Resources, Inc., also tenders for filing revisions to the Contract between WR and the City of Lindsborg, Kansas (City). WR states that the filing makes revisions to the rate schedule currently in effect between WR and the City.

WR requests an effective date of January 1, 2000 for these rate schedule changes.

Notice has been served upon the City of Lindborg, Kansas and the Kansas Corporation Commission.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Sierra Pacific Power Company

[Docket No. ER00–848–000]

Take notice that on December 20, 1999, Sierra Pacific Power Company (Sierra) tendered for filing Service Agreements (Service Agreements) with the following entities for Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff):

For Non-Firm Point-to-Point Transmission Service:

1. City of Seattle, City Light Department
2. Deseret Generation & Transmission Cooperative—Marketing

For Short-Term Firm Point-to-Point Transmission Service:

1. City of Seattle, City Light Department
2. Deseret Generation & Transmission Cooperative—Marketing
3. Public Service Company of Colorado

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 173 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of December 21, 1999 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER00–849–000]

Take notice that on December 20, 1999, Puget Sound Energy, Inc. (PSE), as Transmission Provider, tendered for filing an executed Agreement for Firm Point-To-Point Transmission Service, an executed Agreement for Non-Firm Point-To-Point Transmission Service with City of Seattle, Seattle City Light (SCL), as Transmission Customer, and a letter countersigned by SCL and PSE regarding the Agreements.

A copy of the filing was served upon SCL.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER00–851–000]

Take notice that on December 20, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing a revision to its Transmission Owner Tariff (TO Tariff). The Revised TO Tariff will allow PG&E to recover costs billed to it by the California Independent System Operator (CAISO) for out-of-market dispatch calls due to locational reliability needs or transmission outages from its TO Tariff customers through the Transmission Revenue Balancing Account Adjustment (TRBAA) mechanism.

PG&E proposes that such revision become effective on the date when the CAISO Tariff Amendment No. 23, filed in Docket No. ER00–555–000, is made effective.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–852–000]

Take notice that on December 20, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 6 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 19, 1999 to Enron Power Marketing, Inc. and Southern Company Energy Marketing L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–853–000]

Take notice that on December 20, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 7 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 20, 1999 to FirstEnergy Corp.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the

Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–854–000]

Take notice that on December 20, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 5 to add seven (7) new Customers to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 18, 1999 to Niagara Mohawk Energy Marketing, Inc., Public Service Electric and Gas Company, Dynegy Power Marketing, Inc., Koch Energy Trading, Inc., American Municipal Power-Ohio, Inc., Constellation Power Source, Inc. and American Electric Power Service Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER00–855–000]

Take notice that on December 20, 1999, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service. ASC asserts that the purpose of the Agreement is for ASC when it takes transmission service for itself in accordance with FERC Regulations, and pursuant to its Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. CP Power Sales Five, L.L.C.

[Docket No. ER00–856–000]

Take notice that on December 20, 1999, CL Power Sales Five, L.L.C., tendered for filing Notice of Succession on behalf of CL Power Sales Five, L.L.C., effective December 1, 1999, CL Power Sales Five, L.L.C., changed its name to CP Power Sales Five, L.L.C.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER00–857–000]

Take notice that on December 20, 1999, Cinergy Services, Inc. (Services), tendered for filing on behalf of its operating company, PSI Energy, Inc. (PSI), an Eighth Amendment, dated December 1, 1999, to the Power Coordination Agreement, dated August 27, 1982, as amended, between PSI and Indiana Municipal Power Agency (IMPA).

IMPA and PSI have agreed to a few sections to the current language being used and to transfer the Town of Pittsboro, Indiana (Pittsboro) from the PSI FERC Electric Tariff, Original Volume No. 1 to the Power Coordination Agreement as a member IMPA.

Copies of the filing were served on IMPA, Pittsboro and the Indiana Utility Regulatory Commission.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. San Diego Gas & Electric Company

[Docket No. ER00–858–000]

Take notice that on December 21, 1999, San Diego Gas & Electric (SDG&E), tendered for filing certain revised Transmission Owner (TO) Tariff sheets to supersede First Revised Sheet Nos. 67 and 71 through 77. SDG&E requests an effective date of January 1, 2000. SDG&E states the instant filing is submitted to revise the Reliability Must-Run (RMR) Revenue Requirement and RMR Charges set forth in its TO Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. MidAmerican Energy Company

[Docket No. ER00–859–000]

Take notice that on December 21, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Network Integration Transmission Service Agreement with Central Illinois Light Company (CILCO), dated November 23, 1999, and a Network Operating Agreement with CILCO, dated November 23, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of December 1, 1999 for the Agreements with CILCO, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on CILCO, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER00–860–000]

Take notice that on December 21, 1999, San Diego Gas & Electric Company (SDG&E), tendered for filing a revision to its Transmission Owner Tariff (TO Tariff). The Revised TO Tariff will allow SDG&E to recover costs billed to it by the California Independent System Operator (ISO) for out-of-market dispatch calls due to locational reliability needs or transmission outages from its TO Tariff customers through the Transmission Revenue Balancing Account Adjustment (TRBAA) mechanism.

SDG&E proposes that such revision become effective on the date when the ISO Tariff Amendment No. 23, filed in Docket No. ER00–555–000, is made effective.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Alrus Consulting, LLC

[Docket No. ER00–861–000]

Take notice that on December 21, 1999, Alrus Consulting, LLC (Alrus), tendered petitions to the Federal Energy Regulatory Commission for acceptance of Alrus Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Alrus also requested waiver of the 60-day prior notice requirement to allow Alrus Rate Schedule FERC No. 1 to become effective January 15, 2000.

Alrus intends to engage in wholesale electric power and energy purchases and sales as a marketer. Alrus is not in the business of generating or transmitting electric power. Alrus is a Nevada limited liability corporation

with its principal place of business in Reno, Nevada. Alrus is involved in a wide range of consulting services with a special emphasis on utility businesses and services.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–862–000]

Take notice that on December 21, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 8 to add three (3) new Customers to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 22, 1999 to Engage Energy US, L.P., Statoil Energy Trading, Inc. and PECO Energy Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[[Docket No. ER00–863–000]

Take notice that on December 21, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 9 to add four (4) new Customers to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 24, 1999 to Cinergy Services, Inc., Strategic Energy L.L.C., Virginia Electric and Power Company, and Williams Energy Marketing & Trading Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New York Independent System Operator, Inc.

[Docket No. ER00–864–000]

Take notice that on December 21, 1999, the New York Independent System Operator, Inc. (NYISO), tendered for filing 62 Service Agreements for Firm Point-to-Point Transmission Service, 57 Service Agreements for Non-Firm Point-to-Point Transmission Service, and 68 Service Agreements for service under the New York Independent System Operator Market Administration and Control Area Services Tariff.

Except as otherwise noted, the NYISO requests an effective date of November 18, 1999 and waiver of the Commission's notice requirements.

Copies of this filing were served on the Commission's Service List in Docket Nos. ER97–1523–000 et al., on the parties to the Service Agreements and on the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Consolidated Edison Energy, Inc. and Northeast Utilities Service Company

[Docket No. ER00–865–000]

Take notice that on December 21, 1999, Consolidated Edison Energy, Inc. (Con Edison Energy) and Northeast Utilities Service Company (NUSCO), on behalf of Western Massachusetts Electric Company (WMECO), tendered for filing a request for limited waiver of the code of conduct provisions which require prior authorization by the Federal Energy Regulatory Commission (FERC or Commission) pursuant to Section 205 of the Federal Power Act (FPA) for market-based electricity sales transactions among affiliates.

Con Edison Energy and NUSCO also provisionally request waiver of any prohibition on the sharing of certain load information. The request was filed pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure. 18 CFR 385.207(a)(5). The requested effective date for the waivers is January 1, 2000.

Petitioners state that copies of this filing have been sent to the Massachusetts Department of Telecommunications and Energy.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. California Independent System Operator Corporation

[Docket No. ER00–866–000]

Take notice that on December 21, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 24) to the ISO Tariff. Amendment No. 24 includes proposed revisions to the ISO Tariff to implement the two-step long-term grid planning process developed by stakeholders and the ISO.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Southwest Power Pool

[Docket No. ER00–867–000]

Take notice that on December 21, 1999, Southwest Power Pool (SPP), tendered for filing 6 executed service agreements with Ameren Services, Board of Municipal Utilities, City Water & Light, Duke Energy Trading and Marketing, L.L.C., Merchant Energy Group of the Americas, Inc., and Oklahoma Municipal Power Authority for loss compensation service under the SPP Tariff.

SPP requests an effective date of January 1, 2000, for each of these agreements.

Copies of this filing were served upon all signatories.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Southern Company Services, Inc.

[Docket No. ER00–869–000]

Take notice that on December 21, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APCo), tendered for filing an Interconnection Agreement (IA) by and between APCo and Mobile Energy LLC. (Mobile). The IA will interconnect Mobile's generating facility to be located in Mobile County, Alabama to APCo's electric system.

An effective date of December 21, 1999 has been requested.

Comment date: January 10, 2000, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–167 Filed 1–4–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–33–000, *et al.*]

Wisconsin Power & Light Company , *et al.*; Electric Rate and Corporate Regulation Filings

December 28, 1999.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power & Light Company

[Docket No. EC00–33–000]

Take notice that on December 21, 1999, Wisconsin Power & Light Company tendered for filing a supplement to its application requesting authorization under Section 203 of the Federal Power Act to transfer ownership and operational control of its FERC-jurisdictional transmission facilities to the Wisconsin transmission company.

Comment date: January 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. EC00–41–000]

Take notice that on December 22, 1999, Commonwealth Edison Company (ComEd), tendered for filing an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, 18 CFR Part 33, for an order approving the transfer of jurisdictional assets.

ComEd states that it has, by overnight mail, served a copy of the Application on the Illinois Commerce Commission and on other identified entities.

Comment date: January 21, in accordance with Standard Paragraph E at the end of this notice.

3. Transalta Energy, Inc.; Transalta Energy Marketing (US) Inc.; Transalta Energy Marketing (California) Inc.; Transalta Centralia Generation LLC; Transalta Investments LLC; Transalta USA Inc.

[Docket No. EC00–42–000]

Take notice that on December 22, 1999, TransAlta Energy, Inc., TransAlta Energy Marketing (US) Inc., TransAlta Energy Marketing (California) Inc., TransAlta Centralia Generation LLC, TransAlta Investments LLC and TransAlta USA Inc., tendered for filing an application pursuant to Section 203 of the Federal Power Act (FPA) concerning the reorganization of all of the subsidiaries of TransAlta Corporation in the United States that are, or soon will be, subject to the Commission's jurisdiction under Section 205 of the FPA.

Comment date: January 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company; AmerGen Energy Company, L.L.C.

[Docket No. EC00–43–000]

Take notice that on December 23, 1999, Jersey Central Power & Light Company (doing business as GPU Energy) and AmerGen Energy Company, L.L.C. (AmerGen), tendered for filing a joint application under Section 203 of the Federal Power Act for authorization for GPU Energy to sell, and AmerGen to purchase, certain assets subject to the jurisdiction of the Federal Energy Regulatory Commission.

Comment date: January 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Union Power Partners, L.P.

[Docket No. EG00–56–000]

Take notice that on December 21, 1999, Union Power Partners, L.P. (UPP), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, tendered for filing with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's Regulations.

UPP is a Delaware limited partnership, which will construct, own and operate a nominal 2,500 MW natural gas-fired generating facility within the region governed by the Southeastern Electric Reliability Council (SERC) and sell electricity at wholesale.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Archer Power Partners, L.P.

[Docket No. EG00–57–000]

Take notice that on December 21, 1999, Archer Power Partners, L.P. (Archer Power), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, tendered for filing with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's Regulations.

Archer Power is a Delaware limited partnership, which will construct, own and operate a 1000 MW natural gas-fired generating facility within the region governed by the Electric Reliability Council of Texas (ERCOT) and sell electricity at wholesale.

Comment date: January 10, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Midlothian Energy Limited Partnership

[Docket No.EG00–58–000]

Take notice that on December 22, 1999, Midlothian Energy Limited Partnership (Applicant), a Delaware limited partnership, whose address is 10000 Memorial Drive, Suite 500, Houston, Texas 77024, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant intends to construct an approximate 1,650 MW natural gas-fired combined cycle independent power production facility near Midlothian, Texas (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold initially by Applicant to TXU Electric Company.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. AmerGen Energy Company, L.L.C.

[Docket No. EL00–30–000]

Take notice that on December 23, 1999, AmerGen Energy Company, L.L.C., tendered for filing an application for waiver of open access transmission tariff requirements and OASIS requirements under Order Nos. 888 and 889.

Comment date: January 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER99–4545–003

Take notice that on December 22, 1999, the California Independent System Operator Corporation (ISO) tendered for filing changes to the ISO Tariff to comply with the Commission's order in California Independent System Operator Corp., 89 FERC ¶ 61,299 (1999).

The ISO states that this filing has been served upon all parties in this proceeding.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER00–871–000]

Take notice that on December 22, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing a supplement to its annual update filing governing Reliability Must Run (RMR) services provided by various PG&E power plants to the California Independent System Operator Corporation (ISO). PG&E's earlier annual update filing, which was filed on November 3, 1999, was approved by an Office Director's order issued pursuant to delegated authority on December 6, 1999.

PG&E has explained that its supplemental filing in this docket is being made in order to update the Contract Service Limits for PG&E's hydroelectric facilities, pursuant to Section 4.11(b) of the Must-Run Service Agreements between PG&E and the ISO.

Copies of PG&E's supplemental filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission, and all persons on the official service list in these proceedings.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Electric Power Company

[Docket No. ER00–872–000]

Take notice that on December 22, 1999, Maine Electric Power Company (MEPCO) tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d, and Part 35 of the Rules and Regulations (Regulations), 18 CFR Part 35, of the Federal Energy Regulatory Commission (FERC or Commission), an executed Form of Service Agreement for Firm Point-To-Point Transmission Service between MEPCO and Casco Bay Energy Company L.L.C.

MEPCO respectfully requests that the Commission (1) accept this Service Agreement for filing without modification or condition; and (2) grant waiver of any and all requirements, including notice, in order for the Service Agreement to become effective on April 1, 2000.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. New Century Services, Inc.

[Docket No. ER00–873–000]

Take notice that on December 22, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and WestPlains/UtiliCorp United.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Energy West Resources, Inc.

[Docket No. ER00–874–000]

Take notice that on December 22, 1999, Energy West Resources, Inc., petitioned the Commission for acceptance of EWR Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

EWR intends to engage in wholesale electric power and energy purchases and sales as a marketer. EWR is not in the business of generating or transmitting electric power. EWR is a wholly owned subsidiary of EWI which owns and operates natural gas and propane distribution facilities.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Central Illinois Light Company

[Docket No. ER00–875–000]

Take notice that on December 22, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and two service agreements with two new customers, The Energy Authority, Inc., and TXU Energy Trading Company.

CILCO requested an effective date of December 20, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Central Illinois Light Company

[Docket No. ER00–876–000]

Take notice that on December 22, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, The Energy Authority, Inc.

CILCO requested an effective date of December 20, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. FirstEnergy System

[Docket No. ER00–877–000]

Take notice that on December 22, 1999, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for: Allegheny Energy Supply Company, LLC, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is December 10, 1999 for the above mentioned Service Agreement in this filing..

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Consumers Energy Company

[Docket No. ER00–878–000]

Take notice that on December 22, 1999, Consumers Energy Company (Consumers), tendered for filing an

executed service agreement for Network Integration Transmission Service with the Municipal Cooperative Coordinated Pool. The agreement is pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and Detroit Edison Company (Detroit Edison) and has an effective date of January 1, 2000.

Copies of the filing were served upon the Michigan Public Service Commission, Detroit Edison and the customer listed above.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER00–879–000]

Take notice that on December 22, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an Interim Agreement between the ISO, Pacific Gas and Electric (PG&E), and the Sacramento Municipal Utility District (SMUD), and Amendment No. 1 to that Agreement. The Interim Agreement establishes the means by which information concerning the generation and load internal to SMUD's transmission system is communicated to and accounted for by the ISO. Amendment 1 modifies the Interim Agreement in order to permit a Generating Unit internal to SMUD's Service Area to participate in the ISO's Ancillary Services and Imbalance Energy markets.

The ISO states that this filing has been served on PG&E, SMUD, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. FirstEnergy System

[Docket No. ER00–880–000]

Take notice that on December 22, 1999, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Allegheny Energy Supply Company, LLC, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is December 10, 1999 for the above mentioned Service Agreement in this filing.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER00–881–000]

Take notice that on December 22, 1999, PP&L, Inc. (PP&L), tendered for filing with the Federal Energy Regulatory Commission an executed Interconnection Agreement between PP&L and Energy Unlimited, Inc. (EUI), dated December 8, 1999, and an executed Addendum to the Interconnection Agreement between PP&L and EUI, dated December 14, 1999.

PP&L requests waiver of the Commission's notice requirements to permit the Interconnection Agreement and the Addendum to become effective as of December 23, 1999. PP&L states that a copy of this filing has been provided to EUI and the Pennsylvania Public Utility Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Northern Maine Independent System Administrator, Inc.

[Docket No. ER00–882–000]

Take notice that on December 22, 1999, Northern Maine Independent System Administrator, Inc. (Northern Maine ISA), tendered for filing: (1) Amendments to Northern Maine Market Rules 4 and 5; (2) Northern Maine Market Rule 7, setting forth the Northern Maine ISA's authority to impose penalties and sanctions for certain conduct by Market Participants; and (3) the Northern Maine ISA Conflict of Interest Policy and Standards of Conduct. This filing is made to fulfill commitments made by the Northern Maine ISA to the Commission in its August 25, 1999 filing, which filing was accepted by the Commission by order dated November 15, 1999.

Northern Maine ISA requests an effective date of March 1, 2000, to coincide with the institution of retail electric competition in the State of Maine.

A copy of this filing has been served on the Maine Public Utilities Commission and all other parties that were served with the August 25, 1999, filing.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Idaho Power Company

[Docket No. ER00–883–000]

Take notice that on December 22, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and PP&L Montana, LLC.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER00–884–000]

Take notice that on December 22, 1999, Commonwealth Edison Company, (ComEd), tendered for filing a Service Agreement for Network Integration Service (Service Agreement) and a Network Operating Agreement (Operating Agreement) between ComEd and Nicor Energy, L.L.C. (Nicor). This agreement will govern ComEd's provision of network service to serve retail load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 10, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Nicor.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Williams Energy Marketing & Trading Company

[Docket No. ER00–885–000]

Take notice that on December 22, 1999, Williams Energy Marketing & Trading Company (Williams), tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, its Second Revised FERC Electric Rate Schedule No. 1.

The primary purpose of the filing is to update Williams' existing FERC Electric Rate Schedule No. 1 to provide for the resale of firm transmission rights (FTRs) issued by the California Independent System Operator Corporation (CAISO) in accordance with the Commission's November 10, 1999 Order in California Independent System Operator Corp., 89 FERC ¶ 61,153 (1999). In addition, Williams' Second Revised FERC Electric Rate Schedule No. 1 incorporates the Commission's prescribed language providing for the potential reassignment of transmission capacity, in accordance with the Commission's November 28, 1997 Order in Enron Power Marketing, Inc., 81 FERC ¶ 61,277 (1997). The revised Rate Schedule also makes other minor clarifying changes.

Williams requests waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR

35.3, to permit its Second Revised FERC Electric Rate Schedule No. 1 to become effective as of February 1, 2000.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. New York State Reliability Council

[Docket No. ER00–886–000]

Take notice that on December 22, 1999, the New York State Reliability Council (NYSRC), tendered for filing a change to the New York State Reliability Council Agreement (NYSRC Agreement), with the purpose of establishing an efficient cost recovery mechanism for the NYSRC. The NYSRC requests authorization for the New York Independent System Operator (NYISO or ISO) to collect under the appropriate ISO Tariff expenses incurred by the NYSRC in excess of a reasonable level of annual dues paid by participants in the NYSRC.

The NYSRC proposes that the amendment be made effective on February 1, 2000.

A copy of this filing was served upon all persons on the Commission's official service list(s) in Docket Nos. ER97–1523, *et al.,* and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Fitchburg Gas and Electric Light Company

[Docket No. ER00–887–000]

Take notice that on December 22, 1999, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing an unexecuted service agreement out-of-time between Fitchburg and Aquilla Energy Marketing Corporation for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Northern Indiana Public Service Company

[Docket No. ER00–888–000]

Take notice that on December 22, 1999, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with MidAmerican Energy Company (MidAmerican).

Northern Indiana has requested an effective date of December 30, 1999.

Copies of this filing have been sent to MidAmerican, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Geysers Power Company LLC

[Docket No. ER00–894–000]

Take notice that on December 22, 1999, Geysers Power Company, LLC (Geysers Power), tendered for filing its updated Rate Schedules for the Calendar Year 2000 for Reliability Must-Run services provided to the California Independent System Operator Corporation (CAISO) pursuant to the Geysers Main RMR Agreement accepted by the Commission.

Copies of this filing have been served upon the CAISO and the California Public Utilities Commission.

Comment date: January 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. AmerGen Energy Company, L.L.C.

[Docket No. ER99–754–003]

Take notice that on December 23, 1999, AmerGen Energy Company, L.L.C., tendered for filing notification of a change in status with regard to its FERC Electric Tariff, Original Volume No. 1.

Comment date: January 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. AmerGen Energy Company, L.L.C.

[Docket No. ER00–898–000]

Take notice that on December 23, 1999, AmerGen Energy Company, L.L.C. (AmerGen), tendered for filing a power purchase agreement between AmerGen and Jersey Central Power & Light Company.

Comment date: January 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Jersey Central Power & Light Company

[Docket No. ER00–899–000]

Take notice that on December 23, 1999, Jersey Central Power & Light Company (doing business as GPU Energy), tendered for filing an interconnection agreement between GPU Energy and AmerGen Energy Company, L.L.C., dated as of October 15, 1999.

Comment date: January 24, 2000, 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. 00–168 Filed 1–4–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 405–050.

c. *Date Filed:* December 17, 1999.

d. *Applicants:* Susquehanna Power Company, PECO Energy Power Company, and Generation Company.

e. *Name and Location of Project:* The Conowingo Project is on the Susquehanna River in Cecil and Harford Counties, Maryland and Lancaster and York Counties, Pennsylvania. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Ms. Vilna Waldron Gaston or Mr. H. Alfred Ryan, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101, (215) 841–5544, and Mr. Brian J. McManus, Jones, Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–5452.

h. *FERC Contact:* Any questions on this notice should be addressed to David Snyder at (202) 219–2385, or e-mail address: david.snyder@ferc.fed.us.

i. *Deadline for filing comments and or motions:* February 7, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project (P–405–050) on any comments or motions filed.

j. Description of Proposal: Applicants propose a transfer of the license for Project No. 405 from Susquehanna Power Company and PECO Energy Power Company to a new, yet to be incorporated and named, affiliated generating company referenced in the application as Generation Company. Generation Company will be a wholly-owned subsidiary of Newholdco, a currently existing subsidiary of PECO Energy Company. Transfer is being sought as part of a corporate restructuring of PECO Energy. The application includes a proposed lease amendment providing for PECO Energy to operate the project's primary transmission lines.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments files, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–171 Filed 1–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 29, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2966–011.

c. *Date filed:* December 14, 1999.

d. *Applicants:* James C. Katsekas, Zoes J. Dimos, Clement Dam Development, Inc., and Clement Dam Hydroelectric, LLC.

e. *Name and Location of Project:* The Clement Dam is on the Winnepesaukee River in Belknap and Merrimack Counties, New Hampshire. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. Zoes J. Dimos, 27 Pimlico Ct., Bedford NH 03110, (603) 669–7082, and Mr. Dave Kerr, Clement Dam Hydroelectric, LLC c/o Algonquin Power Corporation, 2085 Hurontario Street, Suite 210, Mississauga, Ontario, Canada L5A 4G1, (905) 273–8911.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Comment Date:* February 7, 2000.

j. *Description of Transfer:* Transfer of the license for this project is sought in connection with the sale on August 6, 1999, of the project interests of James C. Katsekas, Zoes J. Dimos, and Clement Dam Development, Inc. to Clement Dam Hydroelectric, LLC, which is owned by Algonquin Power Fund (America), Inc. The applicants request after-the-fact Commission approval of the transfer of the project license. This notice supercedes the notice issued January 14, 1999, for Project No. 2966–009.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–172 Filed 1–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2355–004.

c. *Date Filed:* December 17, 1999.

d. *Applicants:* PECO Energy Company and Generation Company.

e. *Name and Location of Project:* The Muddy Run Project is on the Susquehana River in Lancaster and York Counties, Pennsylvania. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–835(r).

g. *Applicant Contacts:* Ms. Vilna Waldron Gatson or Mr. H. Alfred Ryan, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101, (215) 841–4265, and Mr. Brian J. McManus, Jones Day, Reavis & Pogue, 51 Louisiana Avenue, NW, Washington, DC 20001–2113, (202) 879–5452.

h. *FERC Contact:* Any questions on this notice should be addressed to David Snyder at (202) 219–2385, or e-mail address: david.snyder@ferc.fed.us.

i. *Deadline for filing comments and or motions:* February 7, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2355–004) on any comments or motions filed.

j. *Description of Proposal:* Applicants propose a transfer of the license for Project No. 2355 from PECO Energy Company to a new, yet to be incorporated and named, affiliated generating company referenced in the application as Generation Company. Generation Company will be a wholly-owned subsidiary of Newholdco, a currently existing subsidiary of PECO Energy Company. Transfer is being sought as part of a corporate restructuring of PECO Energy. The application includes a proposed lease amendment providing for PECO Energy to operate the project's primary transmission lines.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received before a specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

David P. Boergers.

Secretary.

[FR Doc. 00–173 Filed 1–4–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6518–9]

Proposed Settlement Agreement; National Emission Standards for Hazardous Air Pollutants (NESHAP) From Facilities That Manufacture Pharmaceutical Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act as amended (CAA), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement entered into by the EPA, the Pharmaceutical Research and Manufacturers of America (PhRMA), Dow Chemical Company (Dow), and the Chemical Manufacturers Association (CMA). On September 21, 1998, EPA issued the National Emission Standards for Hazardous Air Pollutants for Pharmaceutical Production (the Rule), 63 FR 50280. PhRMA filed a petition for review of the Rule. *Pharmaceutical Research and Manufacturers of America* v. *U.S. Environmental Protection Agency, No. 98–1551 (D.C. Circuit).* Dow and CMA joined the litigation as intervenors. The proposed settlement agreement establishes a schedule by which EPA will propose the revisions to the Rule and the preamble language agreed to by the parties and set out in Attachment A to the settlement agreement, and promulgate final revisions.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons not party to the proposed settlement agreement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CAA.

A copy of the proposed settlement agreement has been filed with the clerk of the United States Court of Appeals for the District of Columbia Circuit. A copy of the proposed settlement may be obtained by calling Rhonda Cardwell-Ramos, Air and Radiation Law Office, Office of General Counsel, EPA at 202–564–5606. Written comments should be sent to Karen H. Clark, Water Law Office (2355A), 401 M Street, Washington, DC 20460, and must be submitted on or before February 4, 2000.

Dated: December 30, 1999.

Robert Dreher,

Acting General Counsel.

[FR Doc. 00–185 Filed 1–4–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6518–8]

Local Government Advisory Committee: Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

SUMMARY: The Charter for the Environmental Protection Agency's Local Government Advisory Committee (LGAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. section 9(c). The purpose of LGAC is to provide advice and recommendations to the Administrator of EPA on ways to improve its partnership with Local Governments and provide more efficient and effective environmental protection.

It is determined that LGAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Denise Ney, Designated Federal Officer, LGAC, U.S. EPA, (mail code 1306), 401 M Street, SW, Washington, DC 20460.

Dated: December 14, 1999.

Diane E. Thompson,

Associate Administrator, Congressional and Intergovernmental Relations.

[FR Doc. 00–187 Filed 1–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6518–1]

Alaska: Tentative Determination and Final Determination of Full Program Adequacy of the State of Alaska's Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal landfill criteria. RCRA also requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for municipal landfills.

EPA's notice of Final Partial approval of Alaska's Class I and Class II municipal landfill permit landfill program, and Tentative Partial approval of the State's Class III landfill program was published in the **Federal Register** on October 19, 1998. The public comment period on the Class III component ended on January 26, 1999. There was no request for a public hearing. One letter of comment was received. Today's document contains EPA's Tentative Full and Final Full Determination of Adequacy (approval) of Alaska's municipal solid waste landfill permit program.

Alaska's most recent solid waste management regulatory changes (proposed on August 1, 1997) were finalized by the state in its October 29, 1998, rule revision of 18 AAC 60. The changes that relate to the municipal landfill program were: addition of financial assurance requirements for Class I and II landfills which adopt EPA's 40 CFR part 258, subpart G municipal landfill criteria by reference; addition of the notification requirement for an owner or operator who learns that a municipal landfill has polluted, or may have polluted an aquifer; and removal of the 2010 sunset date (upgrade deadline) for Class III landfills. The removal of the sunset date was implemented under the exemption authority granted to Alaska by the federal Land Disposal Program Flexibility Act of 1996. Alaska's announced intent to remove the sunset date was discussed in EPA's tentative partial Class III approval in the **Federal Register** notice of 10/19/98. The Governor's certification of August 6, 1999, cites that the State has exempted Class III municipal landfills from those requirements of 40 CFR part 258 that are more stringent than the requirements imposed on Class III landfills under 18 AAC 60, as may be amended. The 10/29/98 regulatory revision by Alaska of its solid waste regulations, and the Governor's certification, establishes full adequacy with respect to EPA's part 258 municipal landfill criteria.

On August 30, 1999, EPA received Alaska's request for full program approval. EPA believes there will be no significant adverse comments on today's notice. Nevertheless, a sixty day public comment period is included in today's Tentative full approval by EPA of the state municipal landfill program. If no significant adverse comments are received, the Final full approval will become effective on the tenth day after the end of the comment period. (If there are significant adverse comments, EPA will need to respond to them and possibly publish a withdrawal of full approval.) Today's notice contains both the Tentative and Final actions to streamline the approval process and as a convenience to the public.

With respect to Alaska's Audit Privilege and Immunity Law, today's approval does not reflect a position by EPA regarding the state's authority to administer any other federally authorized, delegated, or approved environmental program. Alaska's program that is in today's Full determination of adequacy is described in the Decision section of this document.

Alaska's application is available for public review at EPA's office in Seattle, and at the EPA operations offices in Juneau and Anchorage. If desired, EPA will deliver a copy immediately (for public viewing) to the Solid Waste office of the Alaska Department of Environmental Conservation in Fairbanks—upon telephone, fax, or written request to the Contact person listed below.

EFFECTIVE DATE AND COMMENT PERIOD: All comments on today's tentative determination of full program adequacy, must be received in writing by the office of the EPA person named in the CONTACTS section of this notice on or before 5:00 PM, Pacific Time, on March 6, 2000. Copies may be sent by fax to Steven B. Sharp, (206) 553–8509, on or before this date provided the original document is also sent by regular mail. EPA is not required to hold a public hearing and is not offering one in today's notice. (In the unlikely event that a need for a public hearing arises, EPA will make an announcement of same in a future **Federal Register**.)

The final determination of full program adequacy of Alaska's municipal solid waste landfill permit program shall become effective on March 15, 2000, if there are not significant adverse written comments on today's document. Alternatively, if EPA receives sufficient adverse comments, a subsequent notice will be published in the **Federal Register** that either withdraws today's final full approval or affirms today's final full program approval. If published, it will discuss the comments received and include

EPA's basis for its withdrawal or affirmation.

FOR FURTHER INFORMATION CONTACT: Mr. Steven B. Sharp, mail code (WCM–128), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101; fax (206) 553–8509, telephone (206) 553–6517. All public comments must in writing and sent to Mr. Sharp at this address by the date specified above.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria (40 CFR part 258) for municipal solid waste landfills (MSWLFs). Section 4005(c)(1)(B) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop and implement permit programs to ensure that municipal solid waste landfills comply with the Federal Criteria under part 258. Section 4005(c)(1)(C) requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria (40 CFR part 258).

EPA has approved portions of about forty State MSWLF permit programs based on its March 3, 1993 Draft Guidance specifying the requirements a State must meet to qualify for approval. (EPA allows partial approvals if the state program largely meets EPA's requirements, and the provisions not included are clearly identifiable.) About six additional state programs have been approved after EPA's proposed State Implementation Rule (SIR) was published in the January 26, 1996, **Federal Register** (61 FR 2584). EPA promulgated the final version of the SIR rule on October 23, 1998, (63 FR 57206). It contains no element which requires revision of, or another public comment period on, any of the tentative and final approvals of state programs that EPA published prior to finalization of the SIR rule.

With respect to Tribes, EPA has been and is currently limiting its solid waste program approvals to State programs. In the opinion filed on October 29, 1996, (on the Campo Band of Mission Indians case) the U.S. Court of Appeals for the District of Columbia Circuit determined that EPA lacks authority under RCRA to approve the solid waste management plan [program] of an Indian Tribe. The Federal Court observed that the Campo Band could seek EPA approval/ruling for a site-specific regulation as a way of obtaining access to the flexibility that is available to approved States. This opinion was discussed in EPA's notice (about Alaska's solid waste program) in the 10/19/98 **Federal Register** and in the **Federal Register** (63 FR 57206) of 10/23/98 which promulgated EPA's final SIR rule. EPA has published a guidance document (Site-Specific Flexibility Requests, EPA530–R–97–016) that discusses the petition-procedure for Tribes.

Approved State permit programs [partial or full determinations] provide interaction between the State and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that regardless of the approval status of a state program and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities. The applicability as to Alaska's Class III landfill category and the exemption authority in the Land Disposal Program Flexibility (LDPF) Act of 1996 is discussed in Section B of this document.

EPA interprets the requirements for States to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA. Finally, EPA believes that the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

All municipal solid waste must be disposed in a landfill which meets these criteria. This includes ash from municipal solid waste incinerators that is determined to be non-hazardous. Any portions of the Federal Criteria which are not included in an approved State program by the applicable effective dates would apply directly to the owner/operator without any approved State flexibility, except as to small landfill criteria exempted by the State (Alaska only) under the LDPF Act.

EPA Regions will determine whether a State has submitted an ''adequate'' program based on the interpretation outlined above. EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Alaska

Today's document promulgates Tentative Full approval and Final Full approval by EPA for all three classes of Alaska's municipal solid waste landfill permit program. Over the recent several years and earlier, Alaska has developed an extensive and practicable approach to management and disposal of many types of non-hazardous solid waste including municipal waste, and to increased protection of human health and the environment. The Alaska Department of Environmental Conservation (ADEC) completed a major revision to its solid waste management rule on January 28, 1996. (It was amended on June 28, 1996, primarily for addition of a new fee structure.) The next revisions (of which only a limited number pertained to municipal landfills) were proposed on August 1, 1997. They were finalized by Alaska on October 29, 1998. This revision included the changes that EPA identified in its notice (of October 19, 1998) as being necessary for the state to obtain full approval. The elements that relate to today's approvals of Alaska's municipal solid waste program are discussed below.

Region 10 received Alaska's application for a partial program adequacy determination on February 12, 1996. The MSWLF program is a component of the Solid Waste Management Program of ADEC that covers a wide range of wastes. EPA published on November 25, 1996, in the **Federal Register** (61 FR 60000) its first tentative determination that most portions (as noted in the discussions therein) of the State's municipal solid waste landfill (MSWLF) program would ensure compliance with the revised Federal Criteria. The public comment ended on January 26, 1997. In early 1997, during the period that EPA was reviewing and evaluating the public comments, proposals were initiated by the Alaska Legislature for reductions and changes to ADEC's Solid Waste program. The outcome resulted in significant differences from the Class III program described in the application of February 1996. In addition, ADEC proposed during this period a removal of the 2010 sunset date (upgrade deadline) via the new authority granted to Alaska by the LDPF Act. Also, the State passed its Environmental Audit Privilege and Immunity act in August 1997. Alaska provided clarifying written

information on the above events, as amendments to its application. These changes and EPA's review of them were described in EPA's next **Federal Register** notice, of October 19, 1998, That notice contained the Agency's final partial approval of Alaska's Class I and Class II municipal landfill program; withdrew the elements of EPA's prior tentative approval of 11/25/96 that applied to the Class III landfill component of Alaska's program; and contained EPA's new tentative partial approval of the State's Class III municipal landfill program. A new comment period was included in EPA's 10/19/98 notice on the tentative Class III approval, which ended on January 26, 1999. The optional public hearing was not held because EPA received no requests for it. One letter of comment was received, which is discussed in Section C of this document.

On August 25, 1999, the Department of Environmental Conservation submitted its request for a full-program approval by EPA as an amendment to its application, which included two certifications. The Governor's Certification, dated August 6, 1999, certifies (with respect to the LDPF Act exemption authority) that full application of the requirements of 40 CFR part 258 to Class III MSWLFs would be infeasible, or would not be cost effective, or is otherwise inappropriate because of remote locations of the units. The Attorney General's letter of August 25, 1999, certifies that the regulations cited in the State of Alaska's request to EPA for final full approval of its solid waste program have been adopted, and are fully effective, and are in the published version of the Alaska Administrative Code.

Class I and Class II Landfills

Today's notice includes final full determination of adequacy (approval) of the State's Class I and Class II municipal solid waste permit program. Alaska defines Class II municipal landfills as those that receive less than twenty tons per day on an annual average and meet specifications that include the federal section 258.1(f)(1) arid or remote small-landfill qualifying criteria. (Approval of the Class III program is discussed separately, below.) EPA published its Final Partial approval of Alaska's Class I and Class II municipal landfill program on October 19, 1998, (63 FR 55863). That notice listed the two additional regulatory criteria needed for the State to obtain full EPA approval.

One criterion was to add financial assurance requirements for Class I and Class II landfills which meet one or more of the mechanisms in subpart G of 40 CFR part 258. The State met this requirement by addition of sub-Section 18 AAC 60.398 which states: ''The owner or operator of a Class I or Class II MSWLF shall meet the financial assurance requirements of 40 CFR part 258, subpart G, revised as of July 1,1998, adopted by reference'' in ADEC's amended regulation of October 29, 1998, which became effective on that date. This sub-section meets (and mirrors) the corresponding criteria in subpart G of part 258.

The second criterion was to add a requirement that the owner/operator of a small landfill must notify the State Director upon knowledge of groundwater contamination resulting from the unit. The State met this requirement by addition of Sub-section 18 AAC 60.305(f) which states: ''the owner or operator must provide written notification to the department within seven days after the owner or operator learns that a MSWLF has polluted, or may have polluted, an aquifer'' in its amended regulation of October 29, 1998. Alaska's new Sub-section (f) applies to all three of the State's classes of municipal landfills.

The federal Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment. 5 U.S.C. 553(b). The Act allows exemption from this requirement if the issuing agency finds good cause that notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(B). The State included a public comment period as part of its process in making the two regulatory amendments described above—as well as on all of ADEC's changes to 18 AAC 60 to present. All of EPA's notices prior to today, on Alaska's solid waste program, also have provided for a public comment period, with provision for optional public hearings if there was sufficient need. The two new portions for the Class I and Class II program in today's determination, which have not yet been subject to a federal comment period, mirror the federal criteria. Therefore, EPA believes that providing prior notice and opportunity for comment on the promulgation of today's final full approval is unnecessary. However, to ensure opportunity for public input, the Agency is providing in today's notice a period for written public comments. EPA is combining its tentative and final full approval actions into one (today's) notice with the final approval becoming effective on the tenth day after the end of the comment period if there are no significant adverse comments.

Conditionally Exempt Hazardous Waste

In the Decision section of EPA's **Federal Register** notice (63 FR 55870) of October 19, 1998, the Agency promulgated its determination of adequacy of Alaska's program for hazardous waste disposal from Conditionally Exempt Small Quantity Generators (CESQG) under 40 CFR 261.5 (as in the July 1, 1998 Code of Federal Regulations). Alaska's criteria requires (per 18 AAC Section 60.020) that CESQG wastes may be disposed of only at a facility that meets the requirements for a Class I or a Class II municipal solid waste landfill. Since both classes currently meet or exceed the Part 258 municipal landfill criteria, Alaska is meeting EPA's CESQG disposal standards under subpart B of part 257, the non-hazardous industrial and commercial wastes landfill rule, and Part 258. Alaska was the first state to receive program approval as to these new EPA criteria for landfilling of CESQG wastes.

Class III Landfills

Today's notice also includes final full determination of adequacy (approval) of the State's Class III municipal solid waste permit program. Alaska's definition in 18 AAC 60.300 for its Class III landfills includes a limitation on the maximum amount waste received to less than five tons per day, or under one ton per day of MSW ash, and also includes other limiting criteria. Based on a compromise by EPA and ADEC in 1993 and 1994, Alaska's regulations (of January 28, 1996, and June 28, 1996) required in 18 AAC Section 60.300(c) that all Class III landfills must, by October 9, 2010, upgrade to meet the standards applicable to either a Class I or Class II MSWLF, or close accordingly by that date. Alaska's October 29, 1998, revision of its regulation removed this 2010 sunset (upgrade) date, which in effect placed its own criteria for Class III landfills in a permanent status. The Governor's certification of August 6, 1999, cites that the State has exempted Class III municipal landfills from those requirements of 40 CFR part 258 that are more stringent than the requirements imposed on Class III landfills under 18 AAC 60, as may be amended. The certification procedure and exemption authority (for the state of Alaska only) in the LDPF Act of 1996 was established by Congress as an amendment to the Solid Waste Disposal Act (SWDA). Therefore, the 10/29/98 revision by Alaska of its solid waste regulations and the Governor's certification establishes full adequacy with respect to EPA's Part 258 municipal landfill criteria.

EPA's notice of 10/19/98 withdrew the elements of EPA's prior tentative approval of November 25, 1996, that applied to the Class III landfill component of Alaska's application. (Alaska's removal of the 2010 requirement was not finalized by the State until after EPA's 10/19/98 notice.) A new comment period was included in EPA's 10/19/98 notice on tentative Class III approval, which ended on January 26, 1999. The optional public hearing was not held because EPA received no requests for it. One letter of comment was received, which is discussed in C of this document.

Sewage and Biosolids

In today's final full approval of Alaska's Solid Waste Program, EPA is not proposing approval under the Clean Water Act with respect to the treatment, storage, landspreading, or disposal of sewage solids, biosolids, sludge, and other wastes that are addressed in EPA's regulations under 40 CFR part 503 and related parts. The SIR process for State approvals focuses on the municipal solid waste permit program, without expressing any opinion on the other programs that are addressed in Alaska's 18 AAC 60 solid waste management rule. With respect to sewage and biosolids wastes, the only criteria in Alaska's rule that are being approved today are those that correspond to EPA's 40 CFR part 258 municipal landfill criteria.

Indian Country

In preparing and reviewing the Alaska application, ADEC and Region 10 have taken into consideration the needs and status of recognized Indian Tribes and Alaska Native Villages. Today's final full approval of the State of Alaska's solid waste permit program does not extend to ''Indian Country'' located in Alaska, as defined in 18 U.S.C. 1151. Because the extent of Indian Country is not certain, the exact boundaries of Indian Country have not been defined. Lands acknowledged by the United States to be Indian Country include the Annette Island Reserve, and trust lands in Klawock, Kake, and Angoon and Alaska Native allotments still in restricted status. By approving Alaska's solid waste program, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Alaska, nor does it intend to limit the existing rights of the State of Alaska, nor does it intend to modify the State's new exemption authority with respect to certain small villages in Alaska.

Land Disposal Program Flexibility Act of 1996

Sub-section (5) of 3(a) of the Land Disposal Program Flexibility Act of 1996 reads, verbatim, as follows: ''ALASKA NATIVE VILLAGES—Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in Section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily on an annual average.''

Note: The reference to ''paragraph (1)'' in the above text is to paragraph (1) of section 4010(c) of SWDA. The exemption authority in 3(a)(5) of the LDPF Act is granted to Alaska only. This act is different than the ''Regulatory Flexibility Act of 1996'' that addresses economic impacts of a wide range of federal programs, and which is referred to near the end of this document.

Small landfills which are exempted by the State of Alaska, under authority of the LDPF Act, from some or all portions of the part 258 criteria will not be subject to the citizens suit provision of section 7002 of RCRA as to those exemptions. An important corollary of the requirements of EPA's amendment to 40 CFR 261.5 is that landfills which the State has exempted from some or all of the part 258 MSWLF criteria would not be eligible to accept CESQG wastes—based on Region 10's interpretation that the meaning of the text in the July 1, 1996, **Federal Register** is that the landfill must be subject to the entire part 258.

On a nationwide basis, another section of the LDPF Act reinstates the exemption on ground-water monitoring for all facilities that receive an average of 20 tons per day or less and meet the qualifying criteria in the LDPF Act for small arid or remote municipal solid waste landfills. The act does not modify the existing Part 258 exemption on liner requirements for qualifying small MSWLFs. The liner exemption, promulgated in October 1991, is still in effect.

Unique Landfills and Special Criteria

Two special categories of landfills are included in ADEC's regulations: ash monofills that accept municipal solid waste (MSW) ash and permafrost MSW landfills. EPA finds that Alaska's regulatory flexibility with respect to methane monitoring and daily cover at MSW ash monofills is in keeping with the new flexibility that EPA promulgated (62 FR 51606) on October 2, 1997. Alaska's MSW ash monofills are handled under 18 AAC 60 Article 3 that sets ADEC's standards for landfill disposal of municipal solid wastes. EPA believes that Alaska's program meets EPA standards for monofills that receive only MSW-ash provided that the ash is non-hazardous based on RCRA requirements.

The Alaska solid waste regulations also include flexibility provisions for permafrost landfills that is different and less stringent than the federal part 258 requirements. Almost all permafrost landfills in Alaska are small and receive less than an average of 20 tons per day of municipal solid waste. EPA believes use of flexibility that is specific to permafrost landfills exclusively is in keeping with practicable capability considerations of RCRA.

Alaska's definition of surface transportation in its October 29, 1998, rule revision remains the same as in the January 1996 and June 1996 editions. It continues to include the same status for barges as before, namely that they are not surface transportation. The definition says (verbatim) that surface transportation means ''pioneer roads and community roads as described in 17 AAC 05.030, or a rail system that routinely handles freight; surface transportation does not include barges or any other form of water craft.'' A comment on EPA's earlier (November 25, 1996) tentative approval challenged the defining of barges and water craft as not being forms surface transportation. As cited in the earlier **Federal Registers**, EPA believes the definition is a State decision, not one that should be made by EPA.

In the wetlands section of the 1996 versions of Alaska's landfill rule, Alaska had a stability requirement that applied only for ''undisturbed'' native wetland soils and deposits used to support the MSW landfill. Part 258 applies this stability requirement to all types, not only undisturbed, wetlands support. ADEC was achieving equivalent stringency with part 258 via its permitting activities and authority. Regardless, this difference (versus part 258) was eliminated in ADEC's 10/29/98 rule revision.

Administrative Elements and Criteria

Part 258.1(f)(3) requires that if the owner/operator of a small, arid or remote, landfill has knowledge of ground-water contamination resulting

from the unit, the owner/operator must notify the State Director. Alaska's 1996 versions of its regulation did not include the equivalent wording as to this sub-section. However, ADEC informed EPA that it believed it was achieving the equivalent via its permitting and compliance monitoring practices, and with support from other agencies. This was discussed in the Agency's tentative determinations. Implementation by Alaska of its regulatory change to 18 AAC 60.300(f) that added an equivalent requirement was made on October 29, 1998. Thus the State regulation now fully meets the Part 258.(1)(f)(3) notification criteria.

With respect to public participation, Alaska cites in the narrative summary of its application that it has been and is ADEC's policy to provide additional public participation opportunities after a permit is issued, including at the time of permit renewals and major modifications or variances, particularly if public interest was expressed at the time of the original permit or if there is any controversy surrounding the permit. The summary states that Alaska's current version of its 18 AAC 15.100(d) regulation does not require public notice or a public hearing on applications for renewal of a permit or amendment. As a means of formalizing ADEC's existing and on-going practices in this area, the Commissioner of ADEC issued a policy paper on October 9, 1996, entitled ''Policy Regarding Public Notice Requirements for Solid Waste Renewals and Modifications.'' A copy was placed in Alaska's application, and this policy serves as a basis of today's final full program determination of adequacy.

Environmental Audit Privilege and Immunity Law

On August 9, 1997, the State of Alaska enacted its Environmental Audit Privilege and Immunity Law. EPA and ADEC worked together on analyzing this law, solely with respect to the solid waste program, and to the Agency's nationwide policies. Based on the information provided by the State on this law, and the State's application for program approval, EPA believes that Alaska has the authority necessary to administer a fully approved RCRA subtitle D permit program for municipal solid waste landfills. Today's full approval does not reflect a position by the Agency regarding the state's authority to administer any other federally authorized, delegated, or approved environmental program. The impact of the state's audit law on the requirements of other federal environmental programs (many of which have more comprehensive requirements than Subtitle D of RCRA) will require a separate review and analysis by EPA.

C. Public Comments

EPA received one letter of public comment, from an individual, on EPA's tentative determination of partial adequacy for Alaska's Class III MSWLF permit program, that was published in the October 19, 1998, **Federal Register**. The commentor questioned the legality of Class III as to RCRA. Alaska informed EPA in mid 1997 of its intent to establish permanently, or until an indefinite time in the future, its Class III landfill category that contains criteria which are less stringent than the federal part 258 municipal landfill criteria. In addition, this was set forth in Alaska's August 1, 1997, proposed 18 AAC 60 rule revision, to remove the 2010 sunset (upgrade) date. In the past, as discussed in the 11/25/96 and 10/19/98 **Federal Registers**, EPA clearly wanted this ''sunset date'' to be in the State's regulation. The State's summary document for the public, that accompanied the August 1997 proposed regulatory changes, specifically highlighted that the State intended to make Class III a permanent category.

The SIR rule, in 40 CFR 239.4 says (verbatim) that ''the state will ensure that existing and new facilities are permitted or otherwise approved and in compliance with the relevant Subtitle D federal revised criteria.'' The exemption authority in section 3(a)(5) of the LDPF act (as to 40 CFR part 258 criteria) is granted by Congress to the State of Alaska only. The choice on what exemptions are established is assigned to Alaska and not to EPA. The combination of the certification made by the Governor and the removal by the State of the 2010 sunset date requirement from Alaska's regulation is in compliance with the LDPF Act and therefore adequate under RCRA. Consequently, EPA is today approving in full the State's Class III municipal landfill permit program.

Environmental Justice: As the commentor points out, EPA places high importance on achieving environmental justice, and on implementing the related provisions of Executive Order 12898. However, the LDPF act does not authorize EPA to become a direct participant in the decisions, or actions, that the State of Alaska implements when making exemptions from part 258 under the LDPF act. With respect to small landfills in general throughout the United States, EPA described in the **Federal Register** (62 FR 40714 of July 29, 1997) its commitment to addressing environmental justice concerns for all residents of the nation. This description was published in conjunction with EPA's regulatory revision (finalized 10/2/97 per 62 FR 51606) to allow the Director of an Approved State the flexibility to establish certain additional alternative criteria for small MSWLFs throughout the United States. EPA cites therein that the Agency's goals are to ensure that no segment of the population bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

Information that also relates to this comment is that ADEC has pointed out that it encourages, in numerous instances, certain activities and field improvements at small landfills ''as an immediate step in the right direction'' even though the state regulations make it necessary for ADEC to deny, or not issue, a full permit. This practice enables incremental upgrading of village landfills while taking into consideration the practicable capabilities that exist in each community or area.

D. Decision

After reviewing the public comments, I conclude that the State's solid waste program for all three of the State's classes of municipal landfills meets all of the statutory and regulatory requirements established by RCRA, and SWDA, including the amendments of the Land Disposal Flexibility (LDPF) Act of 1996. Accordingly, Alaska is granted a full program determination of adequacy, including MSW ash mono-fills and permafrost landfills, for its municipal solid waste landfill permit program that are listed below. The Subparts of 40 CFR part 258 that are included in today's determination are:

Part 258 Subpart A—General, including the establishment of a permanent status for the State's Class III category of municipal landfills, which has been implemented by Alaska under the exemption authority granted by the federal Land Disposal Program Flexibility Act of 1996.

Part 258 Subpart B—Location Restrictions;

Part 258 Subpart C—Operating Criteria;

Part 258 Subpart D—Design Criteria;

Part 258 Subpart E—Ground-Water Monitoring and Corrective Action;

Part 258 Subpart F—Closure and Post-Closure Care; and

Part 258 Subpart G—Financial Assurance Criteria.

The Agency has already approved (63 FR 55870 of October 19, 1998) Alaska's program for landfill disposal of hazardous wastes from conditionally

exempt small quantity generators (CESQG)—under 40 CFR 261.5; part 257 subpart B; and part 258. Alaska's 18 AAC 60 rule requires that CESQG wastes may be disposed of only in a facility that meets the requirements for the State's Class I or Class II municipal landfills.

Section 4005(a) of RCRA provides that citizens may use the citizens suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State, or Tribal, enforcement program. Criteria of 40 CFR part 258 from which a landfill has been exempted by the State of Alaska, under authority of the LDPF Act, are not useable with respect to the citizens suit provision of section 7002. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the relevant portions of the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

E. Regulatory Assessments

The following executive Orders, and assessments required by Federal Statutes, were included in the EPA's approval notice of Partial Determinations in the **Federal Register** (63 FR 55863) of October 19, 1998. No public comments were received on these elements of the notice.

Compliance With Executive Order 12866, Significant Annual Effect on the Economy

The Office of Management and Budget (OMB) has exempted today's action from the requirements of Section 6 of Executive Order 12866.

Compliance With Executive Order 13045, Children's Health Protection

Today's action is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Compliance With Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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 the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to today's action, 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 action implements requirements specifically set forth by the Congress in sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant adverse economic impact on a substantial number of small entities. By approving State municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by part 258 to the extent the State permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR part 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions. Today's approval does not impose any additional burdens on small entities. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act Pursuant to the provision at 5 U.S.C. 605(b). I hereby certify that this approval will not have a significant adverse economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR part 258 requirements. Today's action, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing today's document and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of today's action in the **Federal Register**. Today's action is not a ''major rule'' as defined by section 804(2) of the APA as amended.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Agency does not believe that approval of the State's program would result in estimated costs of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can generally exercise (which will reduce, not increase, compliance costs). Thus, today's document is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the State program will not significantly or uniquely affect small

governments including Tribal small governments. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This document is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: December 21, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 00–186 Filed 1–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00625A; FRL–6486–6]

Pesticides: Science Policy Issues Related to the Food Quality Protection Act; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On November 10, 1999, EPA issued a notice of availability for the draft science policy paper entitled ''Guidance for Performing Aggregate Exposure and Risk Assessments.'' The comment period would have ended January 10, 2000. Due to the holidays, EPA has decided to extend the comment period to February 9, 2000.

DATES: Comments, identified by docket control number OPP–00625, must be received by EPA on or before February 9, 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.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00625 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: : Carol Christensen, Environmental Protection Agency (7505C), 1300 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6230; fax number: (703) 305–7147; e-mail address: christensen.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

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 could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. 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.''

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, the draft science policy paper, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA 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 ''**Federal Register**--Environmental Documents.'' You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request a faxed copy of the draft science policy paper, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6043 for the paper entitled ''Guidance for Performing Aggregate Exposure and Risk Assessments.'' You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this proposed guideline under docket control number OPP–00625. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00625 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 mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be

CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–00625. 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 under ''FOR FURTHER INFORMATION CONTACT.''

II. What Action is EPA Taking?

The Agency has issued the draft science policy paper entitled ''Guidance for Performing Aggregate Exposure and Risk Assessments'' and solicited comments on it. The background on this document can be found in the previous **Federal Register** notice published on November 10, 1999 (64 FR 61343) (FRL–6388–8). Due to the holidays, a time extension of one month is being provided such that the comment period will now end on February 9, 2000.

List of Subjects

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

Dated: December 27, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–74 Filed 1–4–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–3227]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On December 30, 1999, the Commission released a public notice announcing the January 18 and 19, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: December 30, 1999.

The North American Numbering Council (NANC) has scheduled a meeting to be held on Tuesday, January 18, 2000, from 8:30 a.m. until 5:00 p.m., and on Wednesday, January 19, 2000, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW–C305, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

Tuesday, January 18, 2000

1. Approve November 16–17, and December 22, 1999 meeting minutes.
2. North American Numbering Plan Administrator (NANPA) Report. Review of 1999 COCUS and NPA Exhaust Analysis in comparison to the 4Q99 and 1999 total assignments.
3. Review of the Number Pooling Issue Management Group (IMG) Recommendation for a North American Numbering Council (NANC) North American Numbering Plan (NANP) Thousand Block Pool Administrator, and NeuStar's response to the Requirements Document.
4. North American Numbering Plan Administration Oversight Working Group Report.
5. Numbering Resource Optimization (NRO) Working Group Report.
6. Industry Numbering Committee (INC) Report.
7. Local Number Portability (LNP) Working Group Report

Wednesday, January 19, 2000

8. Steering Group Report.
9. Cost Recovery Working Group Report. North American Billing and Collection (NBANC) Update.
10. Telcordia Technologies, Inc., tutorial on code activation.
11. Other Business.

Federal Communications Commission.

Diane Griffin Harmon,

Assistant Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–150 Filed 1–4–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3142–EM]

Texas; Amendment No. 1 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 State of Texas (FEMA–3142–EM), dated September 1, 1999, and related determinations.

EFFECTIVE DATE: December 10, 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 emergency is closed effective December 10, 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)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–166 Filed 01–04–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 201–200063–019.

Title: NYSA–ILA Tonnage Assessment Agreement.

Parties: New York Shipping Association, Inc., International Longshoremen's Association.

Synopsis: The proposed amendment increases certain tonnage assessment rates.

Dated: December 30, 1999.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–215 Filed 1–4–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Optimodal, Inc., One Rollins Plaza, 2200 Concord Pike, Wilmington, DE 19803. Officers: Greg C. Snyder, Vice President (Qualifying Individual), Gerrard J. Trippitelli, President.

Globe.Com Lines, Inc., 10990 Roe Avenue, Overland Park, KS 66211. Officers: Peter Brown, President (Qualifying Individual), William F. Martin, Jr., Vice President.

First Forward International Services, Inc., d/b/a First Forward Container Line, 440 Unit B South Hindry Avenue, Inglewood, CA 90301. Officer: Nicholas A. Schiele, CEO (Qualifying Individual).

Stolt-Nielsen Transportation Group Inc., 15635 Jacintoport Blvd., Houston, TX 77015–6534. Officer: Michael W. Kramer, Sen. Vice President (Qualifying Individual).

Pisces Shipping, Inc. d/b/a Pisces Container Lines, 2428 S. 4th Avenue, North Riverside, IL 60546. Officer: Kannan S. Iyer, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Sea Gate Logistics, Inc., 182–11 150th Road, Suite 205, Jamaica, NY 11413. Officers: Vi Hung Vuong, President (Qualifying Individual), Renbo Lee, Secretary.

Touchstone Shipping & Logistics, Inc., d/b/a JBS Transport Line, 17314 S.H. 249, Suite 320, Houston, TX 77064. Officers: Julia Gale Bench, President (Qualifying Individual), Rebecca V. Swartz, Vice President.

U.S. Rim Inc. d/b/a U.S. Rim Shipping, 9420 Telstar Ave., Suite 205, El Monte, CA 91731. Officers: Dorothy Sung, Chief Financial Officer (Qualifying Individual), Hui Zhu, CEO.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

ATE Logistics, Inc., 46 N. Lively Blvd., Elk Grove Village, IL 60007. Officers: Patricia Lynch, Asst. Vice President, (Qualifying Individual), Robert W. Noonan, President.

Dated: December 30, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–216 Filed 1–4–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Fact Finding Investigation No. 23—Ocean Common Carrier Practices in the Transpacific Trades; Order Discontinuing Proceeding

On September 21, 1998, pursuant to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* (''Act''), the Federal Maritime Commission (''Commission'') commenced this nonadjudicatory fact finding proceeding to investigate allegations that ocean common carriers in the eastbound Transpacific trades were engaging in activities that may be in violation of certain provisions of the Act. Commissioner Delmond J.H. Won was appointed as Investigative Officer and was authorized to hold hearings and to utilize compulsory processes, including subpoenas, to obtain relevant testimony and documents. Commissioner Won conducted an expedited investigation and submitted a confidential Report and Recommendations (''Report'') to the Commission on January 5, 1999.

A summary of Commissioner Won's Report was released to the public on March 12, 1999. Generally, as indicated by the summary, the Investigative Officer concluded that evidence cited in the Report corroborates allegations that carriers in the eastbound Transpacific trades, faced with shortages of space during the peak 1998 holiday shipping season, refused to carry low rated cargo at applicable contract rates, targeted the cargo of non-vessel-operating common carriers (''NVOCCs'') for rate and space discrimination, and imposed significant and sudden increases in rates and charges. Among other things, the Report concludes that space was allocated in many instances on the basis of profit to the carrier without regard to existing service contracts; and that bookings were often rejected unless the shipper agreed to significantly increased rates or charges. Large, reliable contract shippers were said generally to have received preferential space allocations.

By order dated April 14, 1999, the Commission determined to pursue certain of the Report's findings through further investigation and enforcement action under sections 8, 10 and 11 of the Act, as appropriate. Accordingly, the Commission instituted a show cause proceeding in Docket No. 99–05, ANERA and Its Members, Opting Out of

Service Contracts. That proceeding has now been completed with an Order being issued today which finds the opt out practice reflected in the Asia North America Eastbound Rate Agreement's (''ANERA'') 1998 service contracts and tariff publication in violation of section 8 of the 1984 Act and section 514.17(c)(2) of the Commission's regulations, 46 CFR 514.17(c)(2).

In addition, certain issues were referred to the Commission's Bureau of Enforcement (''BOE'') for further investigation. To facilitate such further investigation, the Commission continued this fact finding proceeding to assist in developing additional evidence concerning the activities of specified ocean common carriers during the period July 1, 1998 to November 1, 1998 in the eastbound Transpacific trades. The Commission directed that the continued investigation focus on carrier activities involving refusal to provide vessel space or equipment to shippers at rates in existing service contracts; demanding or charging rates higher than those in applicable tariffs or service contracts; subjecting any particular NVOCC or NVOCC traffic generally to an unreasonable refusal to deal, or to undue or unreasonable prejudice or disadvantage, or unjustly discriminatory rates or charges; and transporting cargo for, or soliciting service contracts from, individual members of shippers' associations at rates higher than those found in existing contracts of the applicable associations. The Commission designated Vern W. Hill, Director, BOE, as the Investigative Officer for the continued phase of this proceeding.

Among the matters the Commission referred to BOE for further enforcement action as appropriate was the failure of ANERA to file minutes of certain important meetings at which issues of importance to this fact finding investigation were discussed. On September 9, 1999, BOE entered into a compromise agreement with ANERA and its members under which a civil penalty of $55,000 was collected for failure to file three such minutes of conference meetings, including the meetings at which ANERA discussed and agreed to adopt the opt out procedure for service contracts.

On October 18, 1999, the Investigative Officer submitted a confidential Second Report and Recommendations to the Commission, a summary of which is being released simultaneously with this Order. Among other things, the Investigative Officer recommended that this fact finding proceeding be terminated. He expressed confidence that any further need for compulsory process to support BOE's continuing investigations could be provided by other means.

As the report summary indicates, the response of the shipping public to requests for cooperation in the ongoing investigation was generally disappointing. BOE, in coordination with the Investigative Officer, sent numerous letters soliciting further information from shippers and members of shippers' associations which were identified in carrier documents as having had problems obtaining space, or as being pressured to pay higher rates during last year's peak season. BOE contacts with numerous proprietary shippers and consignees, NVOCCs, and shippers' association produced few responses and little further evidence. Nevertheless, the wealth of information and carrier documents produced in the course of the initial phase of this Fact Finding Investigation continue to be examined for additional leads.

Despite the failure of many shippers and other industry participants to respond to the Investigating Officers' invitations to participate in the various stages of this proceeding, the Commission nevertheless is convinced that the effort as a whole has had salutary effects. By identifying and investigating carrier behavior of concern to the numerous parties who complained informally to the Commission, the Fact Finding brought public focus and attention to these activities. the most egregious behavior may have been abated during the early stages of this proceeding. In addition, ANERA and the Transpacific Westbound Rate Agreement have suspended all operations under their agreements, including rate-setting activities and the use of collective service contracts. The Commission actions completed thus far, including the civil penalty settlement and the decision in Docket No. 99–05, have addressed some of the concerns that activities engaged in during the 1998 peak shipping season contravened carrier duties under the Shipping Act of 1984 and may be expected to deter similar future activities. The suspension of ANERA as well as changes in service contract practices already occurring as a result of the Ocean Shipping Reform Act of 1998 also render it unlikely that similar abuses will recur.

The Commission has determined to adopt the Investigative Officer's recommendations. BOE will continue to pursue the possibility of enforcement action against certain ocean common carriers which have been identified by their own documents, as well as by a limited number of shippers, as refusing space or service or demanding rates higher than those set forth in existing service contracts. If compulsory process becomes necessary to support such further investigations, it can be provided by section 15 orders or in the context of a formal adjudicatory proceeding.

Therefore, it is Ordered, That the Investigative Officer's Second Report and Recommendations is accepted by the Commission;

It is Further Ordered, That the record developed in this proceeding shall continue to be available to the Commission's Bureau of Enforcement. To the extent that documents and information comprising this record were obtained under assurances of confidentiality, such documents and information will continue to be held confidential unless and until their use becomes necessary in an adjudicatory proceeding or other Commission action. BOE shall obtain authority from the Commission before utilizing any such document or information in a public proceeding or in any other manner which would disclose such documents or information to persons other than the person who produced it or Commission employees.

It Is Further Ordered, That this non-adjudicatory investigation into practices of ocean common carriers in the Transpacific trades is discontinued; and

It Is Further Ordered, That notice of this Order be published in the **Federal Register**.

By the Commission.*

Ronald D. Murphy,

Assistant Secretary.

Concurring Statement of Commissioner Delmond J.H. Won

While I agree generally that the Commission's efforts in this proceeding has had some salutary effects, I do not share the same degree of confidence that my colleagues feel that our actions and changes wrought by OSRA will deter similar abuses from recurring.

I had earlier expressed publicly my preference for the Commission to have initiated enforcement action against the carriers in their collective capacity rather than against individual lines only. This preference was based on indications that much of the behavior identified in the investigation—such as refusals to provide space under existing service contracts and discriminatory behavior directed toward NVOCCs—may have resulted from concerted

*Commissioner Joseph E. Brennan did not participate in this proceeding. Commissioner Delmond J.H. Won's concurring statement attached.

actions taken by parties to agreements filed with the Commission.

It is my opinion that the Commission's early decision to limit the scope of those enforcement efforts to individual, rather than concerted carrier activity fell short in addressing the more substantive issue raised in this proceeding—that being the possibility of discussion agreements engaging in market distorting behavior.

I fully understand the reluctance of shipper complainants to come forward on the record in such enforcement proceedings, and hat this reluctance hampers our enforcement bureau's ability to identify and prosecute violations. In this case, I believe enforcement was made more difficult because the Commission's chosen course of action may have inadvertently created an impression of taking a ''hands off'' approach to the complaints of unreasonable, collective carrier behavior, further discouraging shippers from undertaking the expenses and commercial risks attended to the Commission's processes.

I continue to believe that given the impact on the flow of commerce caused by TSA's collective behavior, more aggressive enforcement action on the part of the Commission would have been more appropriate.

[FR Doc. 00–214 Filed 1–4–00; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. 1054]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved the fee schedules for Federal Reserve priced services and electronic connections and a private sector adjustment factor (PSAF) for 2000 of $192.6 million. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The new fee schedules become effective April 3, 2000.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Jeff Stehm, Assistant Director (202/452–2217); Erik Kiefel, Financial Services Analyst, Check Payments (202/721–4559); Riaz Ahmed, Assistant Financial Services Analyst, ACH Payments (202/452–3959); Joshua Weisbrod, Assistant Financial Services Analyst, Funds Transfer and Book-Entry Securities Services (202/530–6214); Michele Raville, Information Technology Analyst (electronic connections) (202/736–5601); Donna DeCorleto, Financial Services Analyst, Noncash Collection Service (202/452–3956); or Michael Lambert, Financial Services Analyst, Special Cash Services (202/452–3376), Division of Reserve Bank Operations and Payment Systems. For questions regarding the Private Sector Adjustment Factor: Paul Bettge, Assistant Director (202/452–3174); Bill Pullen, Accountant (202/736–1947), Division of Reserve Bank Operations and Payment Systems. For users of Telecommunications Device for the Deaf (TDD) *only,* please contact Diane Jenkins (202/452–3749).

Copies of the 2000 fee schedules for the check service are available from the Board or the Reserve Banks.

SUPPLEMENTARY INFORMATION:

I. Priced Services

A. Overview

The Federal Reserve Banks continue to meet the Monetary Control Act's requirement that they recover, over the long run, their direct and indirect costs, including imputed costs and profits, of providing priced services. Over the period 1989 through 1998, the Reserve Banks recovered 99.9 percent of their total costs for providing priced services, including imputed expenses, special project costs that were budgeted for recovery, and targeted after-tax profits, or return on equity (ROE).[1]

For 1999, the Reserve Banks estimate that they will recover 102.8 percent of the costs of providing priced services. They project a 99.0 percent recovery rate in 2000. The primary risk to the 2000 projection lies in the ability of the Reserve Banks to meet aggressive revenue and cost targets in the check service, particularly costs associated with its check automation standardization project.

In their 2000 fee schedules, the Reserve Banks include changes that reduce fees to depository institution customers that provide a continued economic incentive for those customers to make greater use of electronic payment services. In particular, the price index for electronic payment services (automated clearinghouse, funds transfer and net settlement, book-entry securities, and electronic check) and electronic connections is projected to decline approximately 4.9 percent in 2000. The index for paper-based payment services (check, special cash, and noncash collection) is expected to increase 3.6 percent. The overall 2000 price index for all Federal Reserve priced services is projected to increase 1.3 percent, compared with an overall decline of 1.9 percent in 1999.[2]

The following are changes in fee structures and levels for priced services in 2000:

- The Reserve Banks will reduce fees for Fedwire funds transfers for the fourth consecutive year. The weighted average price for a Fedwire funds transfer will decline 11.9 percent from the 1999 level. The Reserve Banks, however, will increase the surcharge for off-line Fedwire funds transfers to $15 to reflect better the product's costs. The 2000 fee changes are expected to save customers approximately $5.1 million next year. Including the fee changes for 2000, the price index for Fedwire funds transfers has declined approximately 49 percent since 1996.
- The Reserve Banks will reduce the fee for an on-line Fedwire book-entry securities transfer almost 17.6 percent in 2000. The Reserve Banks, however, will increase the surcharge for off-line Fedwire securities transfers to $18 to reflect better the product's costs. The fee changes are expected to save customers approximately $1.1 million next year. Including the fee changes for 2000, the price index for the book-entry securities service has declined about 16 percent since 1996.

[1] These imputed costs, such as taxes that would have been paid and the return on capital that would have been earned had the services been provided by a private business firm, are referred to as the PSAF. The PSAF is based on data developed in part from a model comprising the nation's fifty largest (by asset size) bank holding companies. Based on consolidated financial data for the holding companies in the model for each of the last five years, the targeted ROE is the budgeted after-tax profit that the Federal Reserve would have earned had it been a private business firm. The ten-year recovery rate is based on the method used for the pro forma income statement for Federal Reserve priced services published in the Board's Annual Report. The pro forma income statement reflects certain costs and offsets to costs differently than do the pro forma cost and revenue performance tables used in this memorandum to set fees. For example, offsets to costs associated with the transition to and retroactive application of the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 87 (SFAS 87), pension accounting, and SFAS 106, other employee retirement benefits accounting, have not been included in this memorandum. If the modification to the PSAF calculation described in section II on the 2000 PSAF were not applied to prior periods, the ten-year recovery rate would increase to 100.7 percent. The 1998 and 1999 service line recovery data in this memorandum do not reflect the revisions to the PSAF method in order to provide a more accurate comparison against the targeted return on equity that was used for establishing prices within those services.

[2] These estimates are based on a chained Fisher Ideal price index. This index was not adjusted for quality changes in Federal Reserve priced services.

• The Reserve Banks will make reductions of 15.4 percent for an ACH small-file origination and 18.2 percent for a large-file origination in 2000. The price reductions are expected to save depository institution customers approximately $3.0 million next year. Including the reductions for 2000, the price index for the ACH service has decreased nearly 46 percent since 1996. In addition, funding for ACH promotion and education programs will increase to promote the use of direct deposit and payment.

• The Reserve Banks will increase fees for paper check products 3.3 percent on a volume-weighted basis over current prices (a 7.1 percent increase from January 1999 fee levels). Paper check products include forward-processed, fine sort, and returned checks. The fees for forward-processed items will increase 3.5 percent over current prices (7.2 percent over January 1999 fee levels). Prices for fine sort and return items will increase 4.4 and 2.1 percent, respectively, over current prices (8.9 and 6.5 percent when compared with January 1999 fee levels). Fees for payor bank services, which include electronic check products, will increase about 11.0 percent (a 14.8 percent increase from January 1999 fee levels). Electronic check products include electronic check presentment, image services, and electronic information. Reserve Banks are standardizing these products and implementing a common pricing structure with fixed and per-item fees. Including the fee changes in 2000, the price index for the check service has increased approximately 14 percent since 1996. Aggregate check service fee increases in 2000 are expected to cost depository institution customers approximately $50 million.

• The Reserve Banks will delay the implementation of the coming year's price and price structure changes until April 3, 2000. The delay is intended to minimize changes during the period surrounding the century rollover. Current Reserve Bank prices and products will remain applicable through the first quarter of next year.

B. Discussion

Table 1 presents an overview of the budgeted 1999, estimated 1999, and projected 2000 cost recovery performance for all priced services. Although the 2000 price changes would not go into effect until April 3, 2000, the 2000 cost recovery rate is a projection for the full calendar year.

TABLE 1

[In percent]

Priced service	1999 budget	1999 estimate	2000 budget
All Services	101.0	102.8	99.0
Check	100.5	101.5	98.7
ACH	104.5	112.6	100.0
Funds transfer	102.0	105.5	100.5
Book-entry	105.2	108.1	101.2
Noncash collection	118.6	140.2	107.6
Special cash	105.8	106.2	101.8

The aggregate cost-recovery rate is heavily influenced by the check service, which accounts for approximately 83 percent of the total cost of priced services. The electronic services (ACH, Fedwire funds transfer, and Fedwire book-entry securities transfer) account for about 17 percent of costs. The noncash collection and special cash services represent a de minimis proportion of priced services expenses. Figure 1 shows the proportion of 1999 estimated priced services costs attributable to each service.

FIGURE 1

1999 ESTIMATED PRICED SERVICE COSTS BY SERVICE

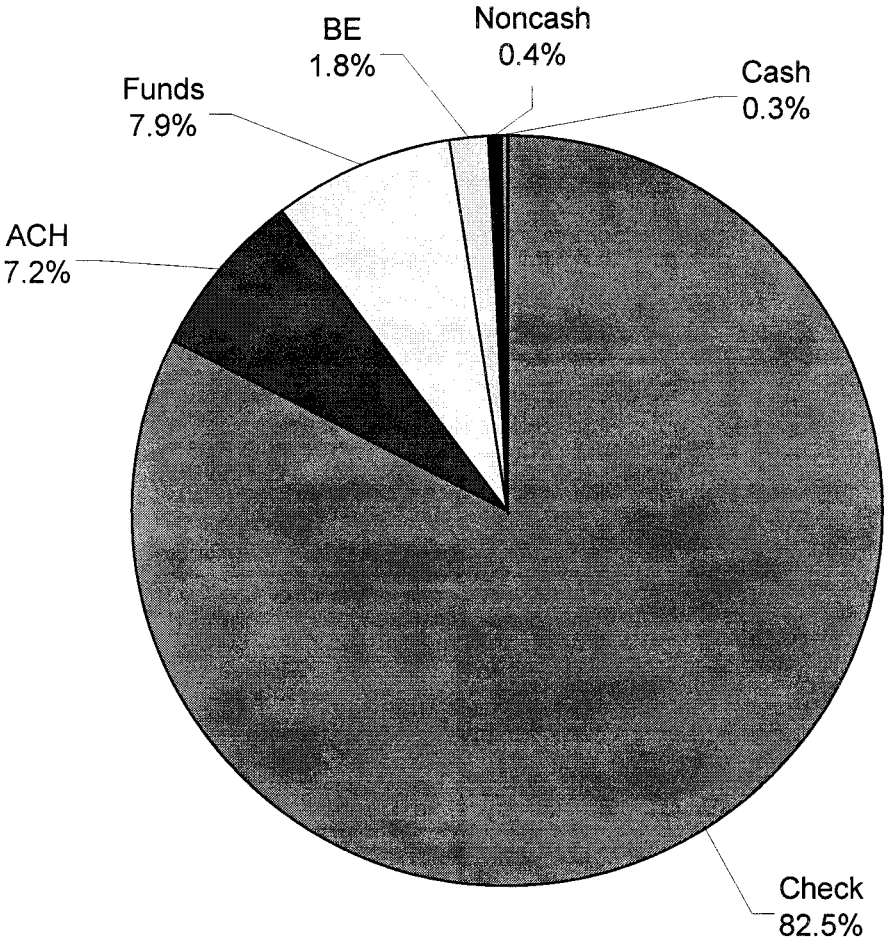

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Table 2 summarizes the cost and revenue performance for priced services since 1998. In 1999, the Reserve Banks completed their recovery of transition costs associated with the automation consolidation project (special project costs) and associated financing costs. In addition to facilitating fee reductions in electronic payment services, the consolidation initiative has dramatically improved the Reserve Banks' disaster recovery and information security capabilities, increased the System's responsiveness to change, and enhanced the central bank's management of payment system risk.

TABLE 2.—PRO FORMA COST AND REVENUE PERFORMANCE [3]

[$ millions]

Year	Revenue [a]	Operating costs and imputed expenses [b]	Special project costs recovered [c]	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE [d]	Recovery rate after target ROE [1/(4+6)]	Special project costs deferred and financed [e]
	1	2	3	4	5	6	7	8
1998	839.7	753.2	15.7	768.9	70.8	52.3	102.3%	1.7
1999 (Est)	871.4	789.7	1.7	791.4	80.0	56.0	102.8%	0.0
2000 (Bud)	925.5	823.7	13.2	836.8	88.7	98.4	99.0%	0.0

[a] Includes net income on clearing balances.
[b] Imputed expenses include interest on debt, taxes, FDIC insurance, and the cost of float. Credits for prepaid pension costs under SFAS 87 and the charges for retirement benefits in accordance with SFAS 106 are included.
[c] Special project costs include the priced portion of automation consolidation costs through 1999 and check standardization costs in 2000.
[d] Targeted ROE is based on the ROE included in the PSAF and has been adjusted for taxes, which are included in column 2. Targeted ROE has not been adjusted to reflect automation consolidation special project costs deferred and financed in 1998.
[e] Totals include financing costs.

1. 2000 Projected Performance

The Reserve Banks project that they will recover 99.0 percent of total expenses related to priced services, including imputed expenses and targeted ROE, in 2000. The 2000 fees for priced services will result in a net income of $88.7 million, compared with a targeted ROE of $98.4 million. The check service will recover approximately $13.2 million of priced services costs associated with the check automation standardization special project.[4]

The price index for electronic payment services and electronic connections is projected to decline approximately 4.9 percent in 2000, and the index for paper-based payment services is expected to increase 3.6 percent. The overall 2000 price index for Federal Reserve services is projected to increase 1.3 percent, compared with an overall decline of 1.9 percent in 1999. Increases in prices for check products are the primary reasons for the higher overall price index in 2000. Figure 2 compares the Federal Reserve's price index for priced services with the gross domestic product price deflator, illustrating that Federal Reserve priced services have historically increased more slowly than the deflator.

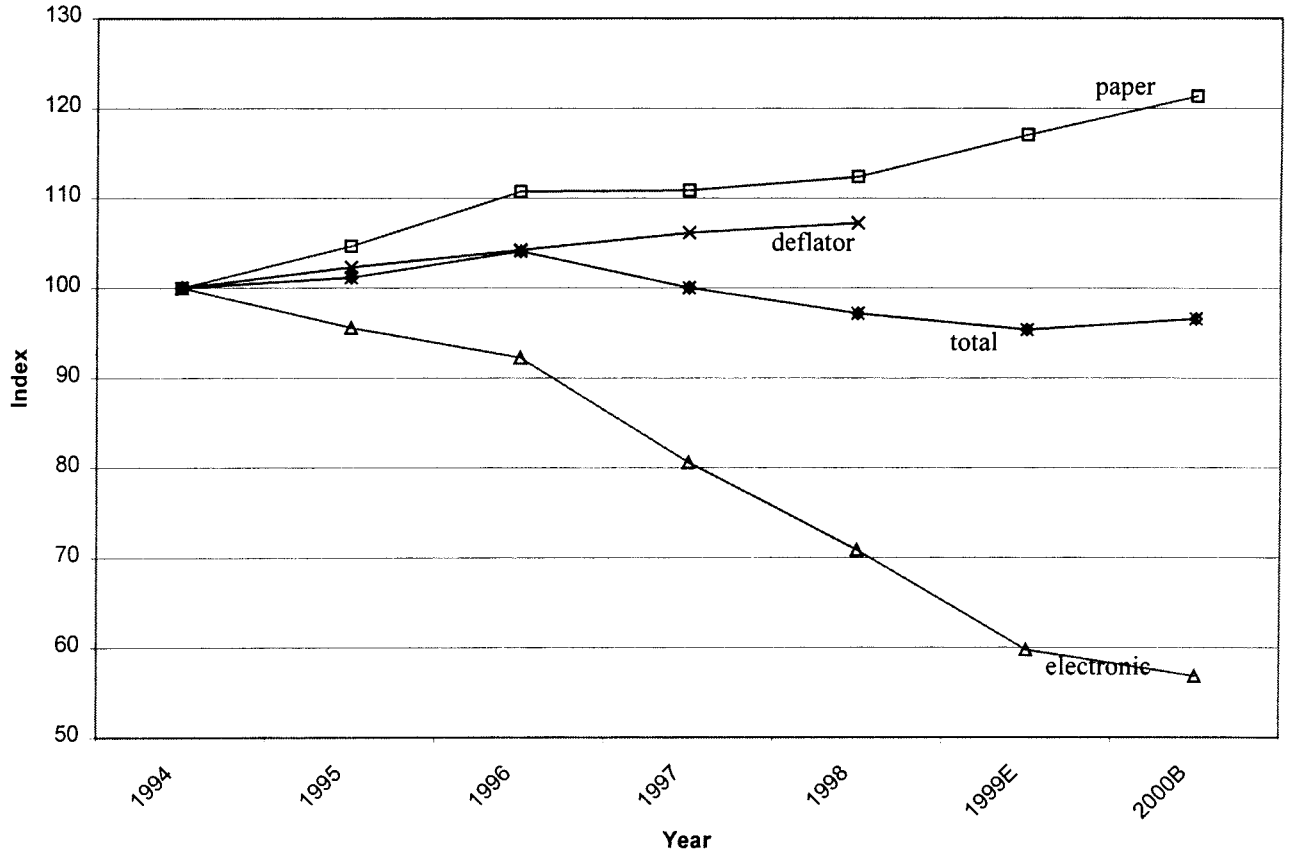
The continued decline in the price index for electronic payment services reflects, in large part, the ability of the Reserve Banks to capitalize on the operational efficiencies and scale economies inherent in providing payment services through centralized electronic payment processing applications. Between 1992 and 1998, the Reserve Banks' automated data processing facilities were consolidated into three sites, significantly reducing the cost of providing electronic payment services.

[3] Calculations on this table and subsequent pro forma cost and revenue tables may be affected by rounding. If the PSAF method used to calculate the 2000 aggregate priced service cost in this table is applied to the actual 1998 and estimated 1999 calculations, the recovery rate for 1998 would decline to 101.1 percent and that for 1999 would decrease to 99.2 percent.

[4] Under an existing Board policy, the Reserve Banks may defer and finance special project costs if they would have a material effect on unit costs, provided that a conservative period is set for full cost recovery and a financing factor is applied to the deferred portion of special project costs. The financing rates represent the weighted-average imputed costs of the Federal Reserve's long-term debt and equity. This method is similar to the approach a private firm would use in financing such costs. The check automation standardization special project did not meet the requirements for deferral and financing. Costs associated with this special project will be fully recovered in 2000.

FIGURE 2

FEDERAL RESERVE PAYMENT SERVICES PRICE INDEX
Chained Fisher Ideal Index Compared With GDP Price Deflator



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2. Allocation of Corporate Overhead Costs to Priced Services

Corporate overhead costs are allocated to priced services in total and to other Reserve Bank activities based on their proportion of total Reserve Bank costs (expense-ratio basis). Because corporate overhead costs are not closely related to any particular priced service, these costs are assigned among the individual services to facilitate the funding of significant multiyear strategic investments that would otherwise result in short-term price fluctuations, subject to established minimum and maximum amounts.[5] In 1998, and to a much smaller extent in 1999, the Reserve Banks assigned these costs among priced services to accelerate the retirement of debt associated with the automation consolidation special project. For 2000, the assignment of corporate overhead costs to individual priced services will support the Reserve Banks' strategic check automation project. Table 3 shows the assignment of corporate overhead costs for the years 1998–2000.

TABLE 3.—CORPORATE OVERHEAD ALLOCATIONS TO PRICED SERVICES

[$ millions]

Year	Check	ACH	Funds transfer	Book-entry	Noncash collection	Special cash	Total
1998 Actual	27.3	0.0	17.4	0.0	0.1	0.2	45.0
1999 (Est)	38.8	3.7	5.9	0.0	0.1	0.2	48.7
2000 (Bud)	36.1	8.2	4.6	1.2	0.1	0.1	50.4

3. 1999 Estimated Performance

The Reserve Banks estimate that priced services will yield a net income of $80.0 million in 1999, compared with a targeted ROE of $56.0 million. In 1999, the Reserve Banks estimate that they will recover 102.8 percent of the costs of providing priced services, including imputed expenses, all remaining automation consolidation special project costs, and targeted ROE, compared with a targeted recovery rate of 101.0 percent.[6] The Reserve Banks recovered a larger-than-expected percentage of costs primarily because of increased revenues associated with higher-than-expected volumes for most priced services, substantial midyear price increases within the check service, and reductions in operating costs in the funds transfer service.

4. 1998 Performance

In 1998, the Reserve Banks'' priced services revenue yielded a net income of $70.8 million, compared with a targeted ROE of $52.3 million. The Reserve Banks recovered 102.3 percent of total expenses, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a targeted recovery rate of 100.8 percent. The Reserve Banks recovered a larger-than-expected percentage of costs primarily because of higher revenues from larger-than-anticipated increases in volume across most services, midyear price increases in the check service, operational cost reductions in the funds transfer service, and lower-than-anticipated support costs in ACH.

C. Check

Table 4 presents the actual 1998, estimated 1999, and projected 2000 cost recovery performance for the check service.

TABLE 4.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net Income (ROE) [1 − 4]	Target ROE	Recovery rate after target ROE [1/(4+6)] (percent)	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1998	651.8	601.7	5.7	607.5	44.4	40.9	100.5	0.0
1999 (Est)	708.9	653.5	0.0	653.5	55.4	45.1	101.5	0.0
2000 (Bud)	768.0	684.4	13.2	697.6	70.4	80.8	98.7	0.0

1. 1998 Performance

The check service recovered 100.5 percent of total expenses in 1998, including imputed expenses, the completion of debt retirement related to automation consolidation special project costs, and targeted ROE. Substantial volume growth at most Reserve Banks and midyear price increases helped actual cost recovery to exceed the targeted rate of 100.4 percent. The volume of checks collected increased 5.3 percent from 1997 levels because of several factors, including (1) The exit of several correspondent banks from the interbank check market; (2) The introduction of new check products; (3) The acquisition of new customers beyond those gained from the exit of correspondent banks; and (4) The increased reliance on Reserve Bank check processing by some banks during merger-and-acquisition-related operational changes.

2. 1999 Performance

Through October 1999, the check service has recovered 102.4 percent of

[5] Corporate overhead costs include all or portions of the following activities: Reserve Bank and System administrative functions, central mail operations, legal, budget preparation and control, expense accounting, records management and contingency planning, motor vehicles, and audit.

[6] Through October 1999, the Reserve Banks recovered 103.6 percent of total priced services expenses, including imputed expenses, automation consolidation special project financing, and targeted ROE.

total expenses, including imputed expenses, and targeted ROE. The Reserve Banks estimate that the check service will recover 101.5 percent of its costs for the full year compared with the targeted 1999 recovery rate of 100.5 percent. The higher recovery rate reflects improved income from higher than expected volumes, midyear 1999 price increases, and higher than expected pension credits.

Volume growth within paper check products has been higher through October 1999 than originally budgeted at all Reserve Banks, largely because of increases in the number of forward-processed items at one Reserve Bank as a major regional bank exited the local correspondent banking business. Table 5 summarizes the year-to-date and currently estimated growth rates for all paper check products for the entire year.

TABLE 5.—PAPER CHECK PRODUCT GROWTH RATES

[In percent]

Check product or service	Budgeted 1999 growth	Volume growth through October 1999	Estimated 1999 growth
Total Forward Collected	1.4	3.0	3.9
Forward-processed	3.1	4.6	5.5
Fine Sort	−9.5	−6.0	−9.0
Returns	2.2	−1.9	−9.7

The Board considers the Reserve Banks' 1999 volume estimates for forward-processed items to be slightly optimistic given current trends. Because of the current volume growth rates and the apparent effects of midyear price increases on these product lines, the Board also expects a much less dramatic reduction in fine sort and return volumes for the full year than that in the Reserve Banks' estimate. The Board believes cost recovery for the full year will likely remain closer to its current level of 102.4 percent than to the 101.5 percent estimated by the Reserve Banks.

The Reserve Banks also have seen steadily increasing demand for some electronic check products. Electronic check presentment (ECP) and check image products have seen approximately 15 percent and 36 percent growth rates, respectively, in 1999. Reserve Banks now provide paying banks with electronic check data or images for approximately 32 percent of Reserve Bank-collected checks, or about 4.5 billion items, up from about 27 percent of all Reserve Bank-collected checks in 1998. Growth and penetration rates for electronic check products are summarized in table 6.

TABLE 6.—ELECTRONIC CHECK PRODUCT PENETRATION AND GROWTH RATES

[Versus net checks collected, in percent]

	Penetration rate through October 1999	Year-over-year growth through October 1999	Estimated 1999 growth
Electronic Check Presentment	18.7	15.3	5.2
Truncation	4.9	22.3	25.4
Non-truncation	13.8	13.0	−1.5
Electronic Check Information	8.0	−3.4	−15.6
Images	5.0	36.2	31.9

The Reserve Banks' growth estimates for 1999 appear to underestimate the growth rates for all electronic check products, except ECP with truncation, when compared with the year-to-date growth rates. The primary reason for this difference appears to be the Reserve Banks' expectation that the current freeze on adding new customers during the months surrounding the century rollover will have a significant effect on volume growth. The Board does not agree with this conclusion and believes that volume growth from current customers will enable the Reserve Banks to sustain growth rates for the full year similar to those seen through October.

3. 2000 Pricing

For the coming year, the Reserve Banks have developed national product and pricing strategies and committed to major infrastructure investments to improve check services, reduce costs, and respond to structural changes, such as mergers and bank operations consolidation, that are occurring in the financial services industry. To serve a growing number of national and interregional customers while still providing flexible and quality service to meet the needs of local customers, the Reserve Banks are establishing a series of national product lines and prices. In 2000, standard national products and price ranges for payor bank services are being initiated.[7] The Reserve Banks expect to establish similar standard products and price ranges for paper check products in the future.

The Reserve Banks also have several major automation initiatives that will affect 2000 expenses, including a critical effort to standardize check processing platforms and software, a national effort to standardize check adjustments software, and several check imaging projects. These automation initiatives are expected to reduce costs and improve service over the long term. For example, the Reserve Banks expect pilot image projects in Montana and Utica, N.Y., to identify operational, legal, and customer service benefits and drawbacks associated with using images and electronic information instead of physical items for processing and collecting checks.

[7] These services include electronic information, electronic check presentment, truncation, image products, large dollar return notifications, and other services.

In 2000, the total forward check collection volume (processed and fine sort) is projected to increase 3.0 percent, reflecting a projected increase of 3.5 percent in processed volume and a decrease of 1.9 percent in fine sort volume. Returned check volume is projected to decrease by half a percent. With respect to payor bank services, volumes for electronic check presentment with paper checks subsequently delivered, electronic presentment of truncated checks, and check imaging are expected to grow 17.2 percent, 12.0 percent, and 50.3 percent, respectively. Electronic check information volume is expected to decline 4.2 percent as volume continues to shift to electronic check presentment products.

In response to the rising costs associated with large infrastructure investments and short-term operational inefficiencies stemming from recent, unanticipated volume increases, the Reserve Banks have modified their pricing strategies to focus upon improving the check service's net revenue position. To that end, the Reserve Banks are establishing more substantial and widespread fee and pricing structure changes in 2000. Table 7 provides details on the 2000 price changes.[8]

TABLE 7.—2000 PRICE CHANGES

[Percent change]

Products	2000 vs. January 1, 1999 fees	2000 vs. current 1999 fees
Total Paper Products	7.1	3.3
Forward-processed	7.2	3.5
Fine Sort	8.9	4.4
Returns	6.5	2.1
Payor Bank Services	14.8	11.0
Electronic Check Presentment	2.6	−1.4

The Reserve Banks will increase fees for paper-based check products on a volume-weighted basis 7.1 percent compared with fees at the beginning of 1999 (3.3 percent compared with current prices). The substantial increase in paper check prices in 2000 result from (a) The initiation of several major projects requiring significant infrastructure investments; (b) Short-term operational inefficiencies within the Reserve Banks' check processing operations as a result of significant volume increases, shifts in the quality and product mix of items being processed, and local market labor constraints; and (c) A revised private sector adjustment factor (PSAF) method. There are no planned changes to Check Relay's consolidated shipment surcharges in 2000.

Prices for payor bank services will increase 14.8 percent in 2000 compared with fees at the beginning of 1999 (11.0 percent compared with current fees) as standard national pricing ranges and product structures and definitions are introduced. Instead of bundled services with a daily minimum fee plus a per-item fee, the new structure includes national, unbundled products with fixed and per-item fee components. For example, customers formerly purchasing a bundled check image product with a single daily minimum and per-item fee will be charged the sum of the individual fixed fees for each part of the unbundled service, such as image capture, retrieval, and archiving, and the individual per-item fees for those services. Under this new structure, fixed fees will generally tend to decrease in 2000 compared with 1999 price levels, while most per-item fees will increase. These changes are part of a longer-term strategy to enhance payor bank services' net revenue contribution to the check service.

The Board supports the Reserve Banks' new focus on improving net revenue in the check service through price increases on highly demanded forward check products. The Board also supports the Reserve Banks' continuing efforts to standardize and unbundle payor bank services and to continue this effort with forward and return products in the future. Table 8 summarizes ranges of key check fees for 2000.

[8] Table 7 shows volume-weighted calculations for 2000 based on a comparison of January 1, 1999, or current transaction fees with the 2000 fees for check products weighted by the 2000 volumes for those services. These volume-weighted calculations summarize changes in specific check product transaction fees while an aggregate price index would include the all-in cost to a customer of purchasing a market basket of Federal Reserve check products. The market basket would include, for example, the effect of changing transaction fees, electronic connection fees, and imputed income.

TABLE 8.—SELECTED CHECK FEES

Products	1999 price ranges		2000 price ranges	
Items:	(per item)		(per item)	
Forward-processed				
City	$0.004 to 0.081		$0.004 to 0.079	
RCPC	$0.004 to 0.180		$0.003 to 0.200	
Fine Sort				
City	$0.004 to 0.015		$0.004 to 0.017	
RCPC	$0.0025 to 0.018		$0.003 to 0.018	
Qualified returned checks				
City	$0.17 to 1.11		$0.17 to 1.15	
RCPC	$0.21 to 1.75		$0.21 to 1.50	
Raw returned checks				
City	$1.00 to 5.50		$1.00 to 5.50	
RCPC	$1.00 to 5.50		$1.00 to 5.50	
Cash letters:	(per cash letter)		(per cash letter)	
Forward-processed	$1.75 to 9.25		$1.75 to 10.25	
Forward fine sort	$3.00 to 14.00		$3.00 to 14.00	
Returned checks: raw/qualified	$1.75 to 14.00		$1.75 to 14.00	
Payor bank services:	(min.)	(per item)	(Fixed)	(per item)
MICR information	$5–$30	$0.001–0.0060	$2–$15	$0.0013–0.0060
Electronic presentment	$3–$14	$0.001–0.0045	$2–$11	$0.0010–0.0120
Truncation	$3–$25	$0.004–0.0170	$2–$10	$0.0060–0.0200
Image			$2–$15	$0.0010–0.0200

For 2000, the Reserve Banks project that the check service will recover 98.7 percent of total costs, including imputed expenses, costs associated with the check automation standardization special project, and targeted ROE. The check service is projected to have expenses totaling $697.6 million and a targeted ROE of $80.8 million. Total expenses, including targeted ROE, are projected to increase approximately $79.3 million, or 11.4 percent, from estimated 1999 expenses. These incremental expenses for 2000 include $35.2 million additional ROE, $29.6 million for automation initiatives, and $14.5 million for other expenses, such as recruitment and retention of staff and new equipment purchases to process increasing check volumes.

Total expenses for 2000 include approximately $81.5 million for check automation initiatives (check standardization, check image projects, and check adjustments standardization), an increase of $29.6 million or 56.9 percent over 1999 estimated expenses for those same projects. Of that total in 2000, approximately $34 million is budgeted for standardizing check processing platforms and software, of which $13.2 million in priced services costs has been budgeted as a special project. Excluding these automation initiatives and the imputed tax effect, total expenses in 2000 would increase $14.5 million or 2.4 percent ($23.6 million or 3.8 percent when the resulting tax effect is imputed) versus $44.1 million or 6.8 percent with the automation initiatives.

The check service is projected to have revenue in 2000 totaling $768.0 million from forward collection and return item processing (75.6 percent), payor bank services (12.2 percent), and other operating and imputed revenues (12.2 percent). Total revenue is expected to increase approximately $59.1 million, or 8.3 percent, in 2000, as a result of increased forward check-collection revenue ($30.2 million), returned check revenue ($6.6 million), payor bank services revenue ($17.6 million), and other operating and imputed revenues ($4.7 million).

Two important risks to the Reserve Banks' ability to realize their cost recovery projections lies in meeting float, volume, and national cost targets and in retaining customers and revenue during a period of substantial price increases. Risks regarding the costs of check automation initiatives and operational risks may also materially affect the check service's cost recovery in 2000.

External challenges that may affect the Reserve Banks' volumes and cost recovery include interstate branch banking and the level of continued competition in the interbank check collection market. Although interstate branch banking may eventually reduce the size of the interbank check collection market, Reserve Bank check collection volumes may increase in 2000 as banks face merger-related operational challenges, exit the correspondent check-clearing business, or outsource their check-processing operations. In addition to increased volumes, some Reserve Banks face a changing mix and quality of processed items that are more costly to process and more complex to price. Many Reserve Banks also face tight local labor markets that have made it increasingly difficult to recruit and retain employees, creating pressures on operational costs, productivity, and quality. To help address these labor-related concerns, the Reserve Banks are identifying and implementing appropriate human resources strategies and programs.

The Board believes that projected 2000 volume increases for paper-based products are reasonable compared with current volume growth rates and the potential negative effect of next year's planned price increases. The Board views the Reserve Banks' projection of substantially increased volumes and revenue for payor bank services to be optimistic given the implementation of a new standardized product structure and its accompanying pricing structure. It also is not clear whether, as the Reserve Banks believe, customers will begin to move aggressively to electronics following the century rollover.

Should the Reserve Banks gain higher-than-projected processing volumes, short-term operational costs associated with adjusting to those new levels may rise faster than their associated revenues. In that case or if the Reserve Banks are unable to manage their internal costs or achieve expected revenue levels, they may have to consider further price increases during the year. The Reserve Banks, however, may have limited opportunities for further price increases during 2000,

given the delayed effective date of April 3 for implementing the 2000 price and price structure changes.

To address this concern, the Reserve Banks are working to improve their market intelligence capabilities and operational efficiency to minimize any adverse effects of unexpected volume increases. The Reserve Banks are also examining other areas for improving net revenue to address any unanticipated volumes or other exigencies during the coming year. The Board supports the Reserve Banks' 2000 pricing while underlining the need for continual vigilance to effectively manage the check service and to address quickly any unanticipated complications that may arise during the year.

D. Automated Clearinghouse (ACH)

Table 9 presents the actual 1998, estimated 1999, and projected 2000 cost recovery performance for the commercial ACH service.

TABLE 9.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1998	68.4	52.2	8.2	60.4	8.0	4.0	106.3%	0.0
1999 (Est)	68.6	56.4	0.0	56.4	12.2	4.5	112.6%	0.0
2000 (Bud)	70.4	62.5	0.0	62.5	8.0	8.0	100.0%	0.0

1. 1998 Performance

The ACH service recovered 106.3 percent of total expenses, including imputed expenses, automation consolidation special project costs, and targeted ROE, in 1998. Commercial ACH volume in 1998 was 13.9 percent higher than 1997 volume, less than the 15.4 percent increase originally projected. The lower-than-expected volume level resulted from consolidation within the industry.

2. 1999 Performance

Through October 1999, the ACH service recovered 112.1 percent of total expenses, including imputed expenses and targeted ROE. For the full year, Reserve Banks estimate that the service will recover 112.6 percent of total expenses compared with the targeted 1999 recovery rate of 104.5 percent. The estimated overrecovery is due to higher revenues ($3.2 million), primarily because possible changes in the pricing structure for products offered to private sector operators were not implemented this year, and due to a reduction in support costs of $2.9 million. During the year, ACH lowered all origination fees an additional $0.0005.

Through October 1999, commercial ACH volume has increased 12.7 percent over the same period in 1998. For the full year, Reserve Banks expect commercial volume to increase 12.7 percent, compared with the 12.0 percent increase originally projected for 1999.

3. 2000 Pricing

After several years of significant price reductions, Reserve Banks will make further price reductions effective April 3, 2000, in the fees for originated ACH items (see table 10). The Reserve Banks will reduce the fee for items originated in small and large files by one mill, generating $3.0 million in aggregate savings to depository institutions next year at projected 2000 volumes. (Including the reductions for 2000, the price index for ACH items has decreased 46 percent since 1996.) These price decreases support the System's strategic direction to encourage the migration from a paper-based to a more electronic payments system and are possible because of ongoing scale efficiencies of centralized ACH processing.

TABLE 10.—2000 PRICE CHANGES

Fee category [9]	Current fee	2000 fee
Item originated in small file	$0.0065	$0.0055
Item originated in large file	0.0055	0.0045

[9] Small files contain fewer than 2,500 items; large files contain 2,500 items or more.

The Reserve Banks project that the ACH service will recover 100.0 percent of its costs in 2000, including imputed expenses and targeted ROE. Total expenses are projected to increase $6.1 million, or 10.8 percent, from the 1999 estimate due to increased joint priced corporate overhead and higher funding for ACH promotion and education programs. Total revenue in 2000 is projected to be $70.4 million, or 2.7 percent higher than the 1999 estimate. The higher revenue is attributable to projected commercial volume growth but also includes a placeholder revenue reduction for possible price and price structure changes associated with resolution of the outstanding issues related to transactions involving private-sector operators.

A risk to the 2000 revenue and cost projections lies in the uncertain effect of potential changes in price and service levels for ACH volume received from or sent to private sector ACH operators. The Board requested comment on potential changes to the Reserve Banks' ACH prices and service level practices with regard to private sector ACH operators (64 FR 27793, May 21, 1999). The Board is evaluating comments on the benefits and drawbacks of modifying the Reserve Banks' pricing practices and deposit deadlines for ACH transactions that they exchange with private sector ACH providers.

ACH volume in 2000 is projected to increase 13.9 percent over 1999 estimates. The 2000 volume estimate assumes the same rate of growth as in 1998 and is higher than the 1999 estimate of 12.7 percent. The Board believes that given the overall anticipated growth rate in the ACH industry and the uncertain effects of potential changes in price and service levels that may affect ACH operators and their customers, the projected 2000 volumes are reasonable.

E. Funds Transfer and Net Settlement

Table 11 presents the actual 1998, estimated 1999, and projected 2000 cost recovery performance for the funds transfer and net settlement services.

TABLE 11.—FUNDS TRANSFER AND NET SETTLEMENT PRO FORMA COST AND REVENUE PERFORMANCE

[$millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE [1/(4+6)] (percent)	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1998	94.5	79.4	0.2	79.6	14.9	6.2	110.2	0.0
1999 (Est)	70.7	61.9	0.0	61.9	8.9	5.2	105.5	0.0
2000 (Bud)	66.0	58.2	0.0	58.2	7.8	7.5	100.5	0.0

1. 1998 Performance

For 1998, the funds transfer and net settlement services recovered 110.2 percent of total expenses, including imputed expenses, automation consolidation special project costs, and targeted ROE, compared with a targeted recovery rate of 102.8 percent. Service revenue for 1998 was approximately $5.9 million, or 6.7 percent, greater than original budget projections due to higher-than-expected transaction volume. Funds transfer on-line origination volume increased 9.6 percent over the 1997 level, compared with expected near-zero growth.

2. 1999 Performance

Through October 1999, the funds transfer and net settlement services recovered 103.8 percent of total expenses, including imputed expenses and targeted ROE. For full-year 1999, the Reserve Banks estimate that the funds transfer and net settlement services will recover 105.5 percent of total expenses, compared with a targeted recovery rate of 102.0 percent. The higher-than-budgeted recovery rate is attributable to cost reductions of $2.6 million, or 3.7 percent, primarily in the areas of support, overhead, and personnel. In particular, the Reserve Banks achieved cost reductions of $1.1 million in 1999 from the consolidation of their off-line processing functions to the Federal Reserve Banks of Boston and Kansas City.

On-line funds transfer volume through October 1999 has increased 4.4 percent relative to the same period in 1998. For the full year, the Reserve Banks expect on-line volume to increase 5.4 percent from the 1998 level, more than the originally budgeted 3.5 percent growth rate. In the first year of the tiered price structure for the Fedwire funds transfer service, there was a greater percentage of total volume in the high-volume, low-price tier than the Reserve Banks had anticipated. The Reserve Banks project that the movement of volume to the low-price tier may be even more pronounced in 2000.

3. 2000 Funds Transfer Pricing

The Reserve Banks will reduce the per-transfer fees charged within all three volume categories and maintaining the current thresholds for volume-based discounts. The Reserve Banks will offer the following per-transfer prices for 2000:

TABLE 12

Volume category	Current fee	2000 fee
First 2,500 transfers per month	$0.34	$0.33
Additional transactions up to 80,000 per month	0.27	0.24
Additional transactions over 80,000 per month	0.21	0.17
Average (volume-weighted) price paid [10]	0.262	0.231

[10] Based on 1999 estimated and 2000 projected volume distributions across depository institution customers.

In addition, the Reserve Banks will increase the off-line surcharge from $13 to $15 to reflect more accurately the cost of processing an off-line funds transfer.

Reserve Banks project that the Fedwire funds transfer service will recover 100.5 percent of total expenses, including imputed expenses and targeted ROE, in 2000. Total costs are expected to decline $3.7 million, or 6.0 percent, from the 1999 estimate, due in part to a decrease in total operating costs and a reduction in corporate overhead costs.

On-line funds transfer volume is expected to increase 6.0 percent over 1999 estimated levels. Despite this anticipated volume growth, service revenue is projected to decline $4.7 million, or 6.6 percent, in 2000 compared with the 1999 estimate because of the lower transfer fees.

4. 2000 Net Settlement Pricing

The Reserve Banks will retain the net settlement per-entry and file fees at their current levels and increase the off-line settlement surcharge from $13 to $15 per transaction to reflect more accurately the costs of off-line processing. Fees for the Fedwire-based settlement service will remain unchanged for 2000.[11]

In March 1999, the Reserve Banks implemented an enhanced net settlement service that allows participants in settlement arrangements to submit settlement files to them via a computer interface connection or a Fedline terminal. The Reserve Banks continue to offer the current ''settlement sheet'' and Fedwire-based settlement services.[12] The settlement sheet service, however, will be phased out, and all participating arrangements will need to migrate to the enhanced service by year-end 2001. Overall use of the net settlement services is not projected to change significantly in 2000.

F. Book-Entry Securities [13]

Table 13 presents the actual 1998, estimated 1999, and projected 2000 cost recovery performance for the book-entry securities service.[14]

TABLE 13.—BOOK ENTRY SECURITIES TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1998	18.8	14.8	1.6	16.4	2.4	1.0	107.8%	1.6
1999 (Est)	17.4	13.3	1.7	15.0	2.3	1.0	108.1%	0.0
2000 (Bud)	17.0	14.9	0.0	14.9	2.1	1.9	101.2%	0.0

1. 1998 Performance

The book-entry securities service recovered 107.8 percent of total expenses in 1998, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE. On-line origination volume increased 24.6 percent from the 1997 level, compared with an expected decrease of 4.5 percent, due mainly to an exceptionally high level of repackaging and new issuance of mortgage-backed securities.

2. 1999 Performance

Through October 1999, the book-entry securities service recovered 107.0 percent of total expenses, including imputed expenses, automation consolidation special project costs, and targeted ROE. For full-year 1999, the Reserve Banks estimate that the book-entry securities service will recover 108.1 percent of total costs compared with a targeted recovery rate of 105.2 percent. This higher-than-budget recovery rate comprises revenue that is 4.3 percent above budget and expense growth that is 1.5 percent above budget. The Reserve Banks expect revenue to be higher than projected due to higher-than-anticipated on-line transaction and monthly maintenance revenue. Costs are expected to be higher than budgeted because the level of government agency securities transfers as a percentage of total book-entry securities transfers processed by the Reserve Banks was higher than anticipated. This resulted in a higher-than-expected allocation of costs to the priced portion of the book-entry securities service.

Book-entry securities transfer on-line origination volume has increased 5.5 percent through October 1999 compared with the same period in 1998 because of continued growth in the level of repackaging and new issuance of mortgage-backed securities. The Reserve Banks expect this growth rate to level off substantially, however, reducing the full-year growth rate to 2.8 percent, compared with the projected 6.1 percent volume decline originally forecast at the beginning of the year.

In March 1999, the Reserve Banks completed the consolidation of their off-

[11] Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transaction fee for each transfer into and out of the settlement account.

[12] The settlement sheet service refers to the transmission to a Reserve Bank of settlement information that is then posted to participants' accounts via the Reserve Banks' accounting system.

line processing functions to the Federal Reserve Banks of Boston and Kansas City. Thus far, the consolidation of these functions has reduced costs approximately $1.6 million.

3. 2000 Pricing

The Reserve Banks will reduce the on-line transfer fee to $0.70 on each side of the transaction from the current $0.85 per side to better reflect the costs of processing on-line transfers of securities. This 17.6 percent decrease in the fee builds upon last year's 24.4 percent fee decrease; combined, these price decreases will make the 2000 fee for a book-entry securities transfer 37.8 percent lower than the 1998 fee.

The Reserve Banks also will increase the off-line surcharge to $18 from $13 to better reflect the costs of providing the off-line service for book-entry securities. Other fees related to book-entry securities will remain the same.

The purchase and sale service represents less than 2 percent of the costs and revenues of the book-entry securities service line. Provision of the service, which facilitates the purchase and sale of Treasury and government agency securities by depository institutions on the secondary market, is consolidated at the Federal Reserve Bank of Chicago. The Reserve Banks will maintain the $40 transaction fee for securities purchases and sales.

The Reserve Banks project that the book-entry securities service will recover 101.2 percent of costs in 2000, including imputed expenses and targeted ROE. Total expenses are projected to decrease $0.1 million, or 0.7 percent, from the 1999 estimate.

G. Noncash Collection

Table 14 lists the actual 1998, estimated 1999, and projected 2000 cost recovery performance for the noncash collection service.

TABLE 14.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE [1/(4+6)] (percent)	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1998	3.6	2.6	0.0	2.6	1.0	0.2	130.9	0.0
1999 (Est)	3.0	2.0	0.0	2.0	1.0	0.1	140.2	0.0
2000 (Bud)	2.0	1.7	0.0	1.7	0.3	0.2	107.6	0.0

1. 1998 Performance

The noncash collection service recovered 130.9 percent of total expenses in 1998 (including imputed expenses and targeted ROE) compared with a target recovery rate of 126.8 percent. Volume for 1998 decreased 14.8 percent from 1997 volumes. This is smaller than the budgeted 19.7 percent reduction.

2. 1999 Performance

Through October 1999, the noncash collection service recovered 141.2 percent of its costs. For full-year 1999, the Reserve Banks estimate that the noncash collection service will recover 140.2 percent of costs, including imputed expenses and targeted ROE, compared with the projected recovery rate of 118.6 percent. The higher recovery rate is attributable to higher-than-expected revenue from additional called-bond activity and higher-than-budgeted coupon volume. Through October, volume had decreased 21.7 percent compared with the same period in 1998. The Reserve Banks estimate that full-year 1999 volume will decline 21.4 percent from 1998 levels compared with a 26.0 percent budgeted decline.

3. 2000 Pricing

The Reserve Banks will reduce two fees relative to 1999 fee levels. Specifically, the Reserve Banks will decrease the fee for bond collections from $50.00 per bond to $40.00 per bond and the per-envelope fee for deposits containing six to fifty coupon envelopes from $3.00 to $2.50. Even with these decreases, the Reserve Banks project that the noncash collection service will recover 108.4 percent of total costs, including imputed expenses and targeted ROE, in 2000. Total expenses are projected to decline approximately $0.3 million, or 13.3 percent, in 2000, due to a projected volume decline of 29.3 percent. Total revenues are projected to decline approximately $1.0 million, or 33 percent, because of the projected volume decline and the fee reductions. Volume declines will continue as the number of bearer municipal securities declines. New issues of bearer municipal securities effectively ceased in mid-1983 when the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) removed the tax advantage for investors.

H. Special Cash

Table 15 presents the actual 1998, estimated 1999, and projected 2000 cost recovery performance for the special cash service.

[13] Includes purchase and sale activity. All volume comparisons prior to 1999 consist of on-line origination volume only, as the Reserve Banks did not charge a fee for the on-line receipt of a transfer until then.

[14] The Reserve Banks provide securities transfer services for securities issued by the U.S. Treasury Department, federal government agencies, government-sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this memorandum, consists of revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the Reserve Banks act as fiscal agents for the United States on behalf of the Treasury Department, which assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the money settlement component of a Treasury securities transfer; this component is not treated as a priced service.

TABLE 15.—SPECIAL CASH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE [1/(4+6)] (percent)	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1998	2.7	2.5	0.0	2.5	0.1	0.1	102.9	0.0
1999 (Est)	2.9	2.6	0.0	2.6	0.2	0.0	106.2	0.0
2000 (Bud)	2.1	2.0	0.0	2.0	0.1	0.1	101.8	0.0

Priced special cash services represent a very small portion (less than one percent) of overall cash services provided by the Reserve Banks to depository institutions. Special cash services include wrapped coin, packaging of nonstandard currency orders and deposits as well as coin deposits, and registered mail shipments of currency and coin.

1. 1998 Performance

In 1998, the special cash service recovered 102.9 percent of total expenses (including imputed expenses and targeted ROE) compared with a targeted recovery rate of 103.1 percent. In May 1998, the uniform cash access policy was implemented. Due to the governmental nature of this function, the costs and revenue associated with nonstandard access are now treated as a nonpriced service.

2. 1999 Performance

Through October 1999, the special cash service recovered 103.6 percent of total expenses, including imputed expenses and targeted ROE. For full-year 1999, the Reserve Banks estimate that the special cash service will recover 106.2 percent of total expenses, compared with a targeted recovery rate of 105.8 percent. Revenue in 1999 is estimated to increase approximately $.2 million, or 7.4 percent from 1998 levels, due mainly to stronger-than-anticipated volume in coin-wrapping in the Helena office and the entrance of the Chicago office in the business of nonstandard packaging of currency orders and deposits.

3. 2000 Pricing

For 2000, the Reserve Banks project that the special cash service will recover 101.8 percent of costs, including imputed expenses and targeted ROE. Total costs in 2000 are projected to decline $.6 million, or 21.6 percent, from the 1999 level. Revenue in 2000 is expected to decline $.8 million, or 27.6 percent, from the 1999 level.

The Fourth District's decision to exit the coin-wrapping business in April 2000 is the primary factor in both the overall anticipated revenue reduction and cost reduction for the year. With Cleveland's departure from coin wrapping, registered mail is likely to constitute approximately 65 percent of special cash revenue.

The Helena office will reduce the fee per box of wrapped coin from $2.50 to $2.25, and the nonstandard packaging fee per coin bag deposited from $3.00 to $2.00.

Changes to surcharges for registered mail shipments of currency reflect a System effort to standardize the method for pricing this product. To that end, the El Paso office will reduce the registered mail surcharge from $80.00 to $31.00, while the Helena office will increase the surcharge from $8.50 to $14.00, and the Tenth District will increase the surcharge for all offices from $12.00 to $13.00. The San Antonio office discontinued registered mail service in April 1999.

II. Private Sector Adjustment Factor

A. Overview

As required by the Monetary Control Act, the Reserve Bank's fee schedule for priced services includes ''taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm.'' These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest (in asset size) bank holding companies (BHCs).

The method for calculating the PSAF involves determining the value of Federal Reserve assets that will be used in providing priced services during the coming year. Short-term assets are assumed to be financed with short-term liabilities; long-term assets are assumed to be financed with a combination of long-term debt and equity derived from the BHC model.

Imputed capital costs are determined by applying related interest rates and rates of return on equity from the BHC model. The long-term debt and equity rates are based on BHCs in the model for each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

B. Discussion

The PSAF for 2000 of $192.6 million represents an increase of $76.8 million, or 66 percent, from the PSAF of $115.8 million for 1999. The large increase in the PSAF for 2000 is due mainly to recognition of the effect of including pension assets and postretirement/postemployment benefit liabilities in the PSAF balance sheet and, therefore, in the computation of imputed asset financing costs and return on equity inherent in the PSAF. Estimates of the priced pension credit were included in pricing decisions beginning in 1993 when accounting standards were implemented to recognize postretirement benefit expenses based on actuarial estimates. Results of actual pension credits and other benefit costs have been included in published pro forma financial statements for the priced services since the inception of the related accounting requirements for pension plans in 1987. The same pension asset and postretirement/postemployment liability have not previously been reflected in balance sheet accounts for PSAF calculation purposes since the pension asset is self-financed through actual income generated by the plan's assets, not through imputed long-term debt and equity factors inherent in the PSAF.[15] The same cumulative effect of income and expenses from pension and other benefits accounting procedures is,

[15] In addition, contributions to fund the Federal Reserve's retirement plan were recognized in expenses when paid and subject to recovery through explicit fees or other recovery methods in those years.

however, included in the balance sheets of bank holding companies (BHCs) used to compute financing rates and return on equity rates applied to Reserve Bank assets to be financed for the 2000 PSAF. These items should be included in the Federal Reserve's PSAF calculation. Including the net cumulative effect of these items in the PSAF would add $60.5 million of additional imputed costs to the 2000 PSAF. Had this net cumulative asset been included historically in PSAF calculations, the ten-year cost recovery amount for 1989–1998 would have been 99.9 percent rather than the 100.7 percent originally calculated. In the future, cost recovery percentages that incorporate these additional financing costs for each rolling ten-year period will be cited.

1. Asset Base

The total estimated value of Federal Reserve assets to be used in providing priced services in 2000 is reflected in table 16. Table 17 shows that the assets assumed to be financed through debt and equity are projected to total $1,116.5 million. This represents a net increase of $465.1 million, or 71.4 percent, from 1999 assets of $651.4 million, as shown in table 17. More than three quarters of this increase results from including net pension assets (prepaid costs less postretirement/postemployment liabilities) of $361.5 million in priced assets to be financed through the PSAF, with building projects in two Districts and check standardization and imaging initiatives accounting for the remaining increase.

2. Cost of Capital, Taxes, and Other Imputed Costs

Table 17 also shows the financing and tax rates and the other required PSAF recoveries for 2000 and compares the 2000 rates with the rates used for developing the PSAF for 1999. The pretax return on equity rate decreased slightly from 23.5 percent for 1999 to 23.3 percent for 2000. The decrease is a result of lower 1998 BHC financial performance included in the 2000 BHC model relative to the 1993 BHC financial performance used in the 1999 BHC model.

3. Capital Adequacy

As shown in table 18, the amount of capital imputed for the 2000 PSAF totals 30.0 percent of risk-weighted assets and 4.82 percent of total assets. The capital to risk-weighted asset ratio and the capital to total assets ratio exceed regulatory guidelines for adequately capitalized institutions and the BHCs.

III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement ''The Federal Reserve in the Payments System.'' [16] Under this policy, Board assesses whether the change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, the Board must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The Board does not believe that the fees and fee structures will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Assuming the Reserve Banks' volume and cost projections are accurate, the fees are set to provide the Federal Reserve a return on equity similar to that earned on average by large bank holding companies during the past five years. Moreover, the recommended 2000 fee schedules will enable the Reserve Banks to continue to recover all actual and imputed costs of providing priced services over the long run. The Board, however, is evaluating changes to certain price and service levels that affect private-sector ACH operators and their customers to determine whether such changes may better promote competition within the market for ACH services (64 FR 27793, May 21, 1999).

[16] FRRS 7–145.2.

TABLE 16.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[millions of dollars—average for year]

	2000	1999
Short-term assets:		
Imputed reserve requirement on clearing balances	$762.2	$757.7
Investment in marketable securities	6,859.5	6,819.6
Receivables [17]	74.2	69.1
Materials and supplies [17]	3.4	4.1
Prepaid expenses [17]	21.4	20.2
Items in process of collection	3,804.2	3,470.7
Total short-term assets	11,524.9	11,141.4
Long-term assets:		
Premises [17 18]	411.7	386.6
Furniture and equipment [17]	180.1	150.3
Leasehold improvements and long-term prepayments [17]	64.2	21.1
Prepaid Pension Costs [17]	599.8	.....
Total long-term assets	1,255.8	558.1
Total assets	$12,780.7	$11,699.5
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	$7,621.7	$7,577.3
Deferred credit items	3,804.2	3,470.7
Short-term debt [19]	99.0	93.4
Total short-term liabilities	11,524.9	11,141.4
Long-term liabilities:		
Postemployment/retirement benefits [17]	238.3	.....
Long-term debt [19]	400.9	207.6
Total long-term liabilities	639.2	207.6
Total liabilities	12,164.1	11,349.0
Equity [19]	616.6	350.5
Total liabilities and equity	$12,780.7	$11,699.5

NOTE: Details may not add to totals due to rounding.

[17] Financed through PSAF; other assets are self-financing.
[18] Includes allocations of Board of Governors' assets to priced services of $0.5 million for 2000 and $0.4 million for 1999.
[19] Imputed figures represent the source of financing for certain priced services assets.

TABLE 17.—DERIVATION OF THE 2000 AND 1999 PSAF

[millions of dollars]

		2000		1999
A. Assets to be financed: [20]				
Short-term		$99.0		$93.4
Long-term [21]		1,017.5		558.1
		$1,116.5		$651.4
B. Weighted average cost:				
1. Capital Structure [22]				
Short-term debt		9.0%		14.8%
Long-term debt		35.8%		31.7%
Equity		55.1%		53.5%
2. Financing rates/costs [22]				
Short-term debt		5.1%		5.1%
Long-term debt		6.6%		6.6%
Pre-tax equity [23]		23.3%		23.5%
3. Elements of capital costs:				
Short-term debt	$99.0 × 5.1% =	$5.0	$93.4 × 5.1% =	$4.8
Long-term debt	400.9 × 6.6% =	26.5	207.6 × 6.6% =	13.7
Equity	616.6 × 23.3% =	143.7	350.5 × 23.5% =	82.4
		$175.2		$100.8
C. Other required PSAF recoveries:				
Sales taxes		$10.3		$8.7
Federal Deposit Insurance assessment		2.9		2.8
Board of Governors expenses		4.2		3.4
		17.4		14.9
D. Total PSAF recoveries:		$192.6		$115.8
As a percent of capital		17.2%		17.8%
As a percent of expenses [24]		28.5%		18.2%
E. Tax rate		31.5%		32.0%

NOTE: Details may not add to totals due to rounding.

[20] Priced service asset base is based on the direct determination of assets method.

[21] Consists of total priced long-term assets less postretirement/postemployment benefit liabilities (for 2000 only).

[22] All short-term assets are assumed to be financed with short-term debt. Of the total long-term assets for 2000, 39.4% are assumed to be financed with long-term debt and 60.6% with equity.

[23] The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.

[24] Systemwide 2000 budgeted priced service expenses less shipping are $675.0 million.

TABLE 18.—COMPUTATION OF 2000 CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars]

	Assets	Risk weighted	Weight assets
Imputed reserve requirement on clearing balances	$762.2	0.0	$0.0
Investment in marketable securities	6,859.5	0.0	0.0
Receivables	74.2	0.2	14.8
Materials and supplies	3.4	1.0	3.4
Prepaid expenses	21.4	1.0	21.4
Items in process of collection	3,804.2	0.2	760.8
Premises	411.7	1.0	411.7
Furniture and equipment	180.1	1.0	180.1
Leases, leasehold improvements & long-term prepayments	64.2	1.0	64.2
Prepaid Pension Costs	599.8	1.0	599.8
Total	$12,780.7	.....	$2,056.3
Imputed Equity for 2000	$616.6		
Capital to Risk-Weighted Assets	30.0%		
Capital to Total Assets	4.82%		

Note: Details may not add to totals due to rounding.

Automated Clearinghouse Fee Schedule [25]

	Fees
Origination (per item or record):	
Items in small files [26]	$0.0055
Items in large files [27]	$0.0045
Addenda record	$0.002
Receipt (per item or record):	
Item	$0.007
Addenda record	$0.002
Input file processing fees (per file):	
Small file	$1.75
Large file	$6.75
Monthly fees:	
Account servicing fee (per routing number)	$25.00
Information extract file	$10.00
Return item/notification of change (NOC) fees [28]:	
Voice response return/NOC [29]	$2.00
Nonelectronic input/output fees [30]:	
Tape input/output	$25.00
Paper output	$15.00
Diskette output	$15.00
Facsimile return/NOC [31]	$15.00

[25] The Reserve Banks will delay implementing the coming year's price and service level changes until April 3, 2000. The delay is intended to minimize changes during the period surrounding the century rollover. Current Reserve Bank prices and products will remain applicable through the first quarter of next year.

[26] Small files contain fewer than 2,500 items.

[27] Large files contain 2,500 or more items.

[28] The Reserve Banks also assess a $15 fee for every government paper return/NOC they process. This service is not considered a priced service. The fee includes the transaction fee in addition to the conversion fee.

[29] The fee includes the transaction fee in addition to the voice-response fee.

[30] These services are offered in contingency situations only.

[31] The fee includes the transaction fee in addition to the conversion fee.

Funds Transfer and Net Settlement Fee Schedule [32]

	Fees
Funds transfer:	
Volume-based pricing fees (originations and receipts)	
Per transfer for the first 2,500 transfers per month	$0.33
Per transfer for additional transfers up to 80,000 per month	$0.24
Per transfer for every transfer over 80,000 per month	$0.17
Surcharge	
Off-line transfer originated	$15.00
Telephone notification	$15.00
Net settlement:	
Basic fee	
Settlement charge per entry	$0.95
Settlement file charge	$12.00
Surcharge	
Off-line origination per file [33]	$15.00
Telephone notification per file	$15.00
Minimum monthly fee	$60.00
Fedwire-based, small-dollar arrangement per settlement day [34]	$100.00
Fedwire-based, large-dollar arrangement per settlement day [34]	$100.00—$175.00

[32] The Reserve Banks will delay implementing the coming year's price and service level changes until April 3, 2000. The delay is intended to minimize changes during the period surrounding the century rollover. Current Reserve Bank prices and products will remain applicable through the first quarter of next year.

[33] The off-line origination surcharge will be waived by Reserve Banks that do not provide an electronic submission capability for the settlement sheet service.

[34] Participants in arrangements and settlement agents are also charged the applicable Fedwire funds transfer fee for each transfer into and out of the settlement account.

Book-Entry Securities Fee Schedule [35]

	Fees
Book-entry securities transfer:	
Basic transfer fee:	
Transfer originated	$0.70
Transfer received	0.70
Reversal originated	0.70
Reversal received	0.70
Surcharge:	
Off-line transfer originated or received	18.00
Off-line reversal originated or received	18.00
Monthly maintenance fees:	
Account maintenance (per account)	15.00
Issues maintained (per issue/per account)	0.45
Purchase & sale:	
Transaction fee	40.00

[35] The Reserve Banks will delay implementing the coming year's price and service level changes until April 3, 2000. The delay is intended to minimize changes during the period surrounding the century rollover. Current Reserve Bank prices and products will remain applicable through the first quarter of next year.

Noncash Collection Fee Schedule [36]

	Fees
Coupon collection:	
Cash letters:	
With five or fewer coupon envelopes	$7.50
With six to fifty coupon envelopes	15.00
Coupon envelopes:	
With five or fewer coupon envelopes	4.75
With six to fifty coupon envelopes	2.50
Return items	15.00
Bond collection (per bond):	[37] 40.00

[36] The Reserve Banks will delay implementing the coming year's price and service level changes until April 3, 2000. The delay is intended to minimize changes during the period surrounding the century rollover. Current Reserve Bank prices and products will remain applicable through the first quarter of next year.

[37] Plus actual shipping costs.

Special Cash Services Fee Schedule [38]

	Fee
Wrapped Coin (per box [39])	
All Fourth District offices—Discontinued April 2000	
Helena office	$2.25
Nonstandard Packaging	
All Seventh District offices (per currency order or deposit)	[40] 12.00
Helena office (per coin bag deposited)	2.00
El Paso office (Express Cash Orders)	[41] 60.00

[38] The Reserve Banks will delay implementing the coming year's price and service level changes until April 3, 2000. The delay is intended to minimize changes during the period surrounding the century rollover. Current Reserve Bank prices and products will remain applicable through the first quarter of next year.
[39] There are fifty rolls of coin in each box.
[40] This service only applies to the $1 through $20 denominations.
[41] El Paso's Express Cash Order Fee applies *only* to orders that need same day preparation and delivery.

Registered Mail Fees [42]

	Surcharge	Insurance fee [43]
First District	$30.00	$0.80
Helena office [44]	14.00	
All Tenth District offices	13.00	0.27
El Paso office	31.00	0.26
San Antonio office—Discontinued April 1999		
All Twelfth District offices	14.00	0.20 (Cont. U.S.)
	.....	0.30 (Other)

[42] Depository institutions also pay any postage fees incurred for registered mail. Postage fees are billed separately from Federal Reserve Bank surcharges and insurance fees.
[43] Insurance fees are per $1,000 shipped via the registered mail service in excess of the first $25,000, which is covered by the U.S. Postal Service.
[44] The Helena office only ships registered mail packages valued up to $25,000, so no additional insurance is needed in excess of the $25,000 covered by the U.S. Postal Service.

Electronic Connection Fee Schedule [45], [46]

The Reserve Banks charge fees for the electronic connections used by depository institutions to access priced services and allocate the cost and revenue associated with electronic access to the various priced services. At this time, electronic access fees for 2000 remain at their 1999 levels.

	Fees
Connection types:	
Dial—receive and send (FedLine)	$75.00 per month.
Link encrypted dial	$200.00 per month.
High-speed dial @ 56 kbps	$350.00 per month.
Multidrop leased line	$450.00 per month.
Dedicated leased line (to 9.6 kbps)	$750.00 per month.
High-speed leased line @ 19.2 kbps	$850.00 per month.
High-speed leased line @ 56 kbps	$1,000.00 per month.
High-speed leased line @ 128 kbps	$1,800.00 per month.
High-speed leased line @ 256 kbps	$2,000.00 per month.
Cross-district	Actual cost.[47]
Contingency testing options: [48]	
Premium dedicated dial test connection	$500.00 per month.
Basic dedicated dial test connection	$250.00 per month.
Shared dial test connection	$150.00 per month.
Third-party contingency site dial test connection	$45.00 per month.

[45] Installation, training, contingency hardware, and software certification are not considered priced services, and the fees for these services are not listed here. For a copy of the full electronic access fee schedule, contact the local Federal Reserve Bank.

[46] The Reserve Banks will delay implementing the coming year's price and service level changes until April 3, 2000. The delay is intended to minimize changes during the period surrounding the century rollover. Current Reserve Bank prices and products will remain applicable through the first quarter of next year.

[47] The customer pays the actual costs of the circuit and a monthly surcharge to cover an equitable share of expenses associated with customer support, depreciation of hardware (that is, link encryption units), and other overhead expenses. At a minimum, this fee must be equivalent to the standard fee for the particular type of leased line connection.

[48] Use of Dial Test connections should not exceed 60 hours per month for the Premium service and 120 hours per year for the Basic and Shared services. Customers exceeding this guideline should establish a Dedicated Leased Line connection for testing.

The Reserve Banks anticipate introducing frame relay as an electronic access service during the second half of 2000. Frame relay will provide higher throughput and enhanced security to leased-line customers. With the deployment of frame relay, the Reserve Banks will develop an additional fee schedule for those customers wanting to migrate to the new network, while still providing access through the current system at the fee levels for those that do not.

By order of the Board of Governors of the Federal Reserve System, December 28, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–42 Filed 1–4–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on February 13–15, 2000, at the Radisson-Barcelo, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Sunday, February 13, Monday, February 14 and Tuesday, February 15 (8:30 a.m. to 6:00 p.m. on Monday and Tuesday) at the Radisson-Barcelo, 2121 P Street, NW, Washington, D.C. 20037. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentation from the Council's subcommittees, Appropriations, Discrimination, International, Prevention, Prison, Racial Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Andrea Hall at (301) 986–4870 no later than January 12, 2000.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 00–120 Filed 1–4–00; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–00–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

National Hospital Ambulatory Medical Care Survey—(0920–0278)—Revision—(NCHS)—The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992 and is directed by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The purpose of the NHAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The target universe of the NHAMCS is in-person visits made in the United States to outpatient departments and emergency departments of non-Federal, short-stay hospitals (hospitals with an average length of stay of less than 30 days) or those whose specialty is general (medical or surgical) or children's general. The NHAMCS was initiated to complement the National Ambulatory Medical Care Survey (NAMCS, OMB No. 0920–0234) which provides similar data concerning patient visits to physicians' offices. The NAMCS and NHAMCS are the principal sources of data on approximately 90 percent of ambulatory care provided in the United States.

The NHAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include patients' demographic characteristics and reason(s) for visit, and the physicians' diagnosis(es), diagnostic services, medications, and disposition. These data, together with trend data, may be used to monitor the effects of change in the health care system, the planning of health services, improving medical education, determining health care work force needs, and assessing the health status of the population.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies such as NIH, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, as well as individual practitioners, researchers, administrators, and health planners. Uses vary from the inclusion of a few selected statistics in a large research effort, to an in-depth analysis of the entire NHAMCS data set covering several years.

The number of respondents for the NHAMCS is based on a sample of 600 hospitals with an 87 percent participation rate. The total cost to respondents is estimated to be $400,000.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Response burden (hrs.)
Hospitals: Induction forms	520	6	1	3,120
Emergency Departments: Induction forms	425	1	1	425
Patient Record forms	425	100	4/60	2,833
Outpatient Departments: Induction forms	400	3	1	1,200
Patient Record forms	400	150	4/60	4,000
Total				11,578

Dated: December 29, 1999.

Kathy Cahill,

Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–130 Filed 1–4–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–00–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey—(0920–0234)—Revision—(NCHS)—The National Ambulatory Medical Care Survey (NAMCS) was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. It is directed by the Division of Health Care Statistics, National Center for Health Statistics, CDC. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The NAMCS target population consists of all office visits within the United States made by ambulatory patients to non-Federal, office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care. Since more than 80 percent of all direct ambulatory medical care visits occur in physicians' offices, the NAMCS provides data on the majority of ambulatory medical care services. To complement these data, in 1992 NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) to provide data concerning patient visits to hospital outpatient and emergency departments. The NAMCS, together with the NHAMCS, constitute the ambulatory component of the National Health Care Survey (NHCS) and will provide coverage of more than 90 percent of ambulatory medical care.

The NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics and reason(s) for visit, and the physicians' diagnosis(es) and diagnostic services, medications and disposition. These data, together with trend data, may be used to monitor the effects of change in the health care system, provide new insights into ambulatory medical care, and stimulate further research on the use, organization, and delivery of ambulatory care.

Users of NAMCS data include, but are not limited to, congressional and other federal government agencies such as NIH and FDA, state and local governments, medical schools, schools of public health, colleges and universities, private businesses, nonprofit foundations and corporations, professional associations, as well as individual practitioners, researchers, administrators and health planners. Uses vary from the inclusion of a few selected statistics in a large research effort, to an in-depth analysis of the entire NAMCS data set covering several years.

To calculate the burden hours, the number of respondents for NAMCS is based on a sample of 6,000 physicians with a 50 percent participation rate (this includes physicians who are out-of-scope as well as those who refuse). The total cost to respondents is estimated to be $300,000.

	Number of respondents (physicians)	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Response burden (hrs.)
Office-based physicians induction form	3,000	1	.42	1,260
Patient record form	3,000	30	.05	4,500
Total				5,760

Dated: December 29, 1999.

Kathy Cahill,

Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–131 Filed 1–4–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC Advisory Committee on HIV and STD Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: CDC Advisory Committee on HIV and STD Prevention.

Time and Date: 8:30 a.m.–12 p.m., January 24, 2000.

Place: Main National Academy of Sciences, 2101 Constitution Avenue NW, Washington, DC.

Time and Date: 1 p.m.–5 p.m., January 24, 2000.

Place: Hotel Lombardy, International Conference Room, 291 Pennsylvania Avenue NW, Washington, DC.

Status: Open to the public, limited only by the space available. The meeting room at the Hotel Lombardy will accommodate approximately 32 people.

Purpose: This Committee is charged with advising the Director, CDC, regarding objectives, strategies, and priorities for HIV and STD prevention efforts including maintaining surveillance of HIV infection, AIDS, and STDs, the epidemiologic and laboratory study of HIV/AIDS and STDs, information/education and risk reduction activities designed to prevent the spread of HIV and STDs, and other preventive measures that become available.

Matters To Be Discussed: Agenda items include issues pertaining to evolving HIV prevention priorities. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford, Committee Management Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–8600, e-mail pbf7@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 21, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–118 Filed 01–04–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families (ACF)

[Program Announcement No. OCSE 99SIP–1]

Child Support Enforcement Demonstration and Special Projects—Special Improvement Projects

AGENCY: Office of Child Support Enforcement (OCSE), ACF, DHHS.

ACTION: Announcement of availability of funds and request for competitive applications under the Office of Child Support Enforcement's Special Improvement Projects.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE) invites eligible applicants to submit competitive grant applications for special improvement projects which further the national child support mission, vision, and goals which are: all children to have parentage established; all children in IV–D cases to have financial and medical orders; and all children in IV–D cases to receive financial and medical support. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is March 6, 2000. See Part IV of this announcement for more information on submitting applications.

ADDRESSES: Application kits (Forms 424, 424A–B; Certifications; and Administration for Children and Families Uniform Project Description [UPD]) containing the necessary forms and instructions to apply for a grant under this program announcement are available from: Administration for Children and Families, Office of Child Support Enforcement, Division of State and Local Assistance, 370 L'Enfant Promenade, S.W., 4th Floor, East Wing, Washington, D.C. 20447 (*This is not the mailing address for submission of applications, see Part IV, B.*); or accessible via OCSE's Website (www.acf.dhhs.gov/programs/cse/) under new announcements; or contact Jean Robinson, Program Analyst, phone(202)401–5330, FAX(202) 205–4315; e-mail: jrobinson@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), OCSE, Susan A. Greenblatt at (202) 401–4849, for specific questions regarding the application or program concerns regarding the announcement.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, and CFDA Number.

Part II: Project and Applicant Eligibility—eligible applicants, project priorities, and project and budget periods.

Part III: The Review Process—intergovernmental review, initial ACF screening, competitive review and evaluation criteria, and funding reconsideration.

Part IV: The Application—application development and application submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424 (0348–0043); 424A (0348–0044); 424B (0348–0040); Disclosure of Lobbying Activities (0348–0046); Uniform Project Description (0970–0139 Expiration date 10/31/00).

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.

Part I. Background

A. Program Purpose and Objectives

To fund a number of special improvement projects which further the national child support mission to ensure that all children receive financial and medical support from both parents, and which advance the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). PRWORA strengthens the ability of the nation's child support program to collect support on behalf of children and families. The law also enables the testing of child support innovations to improve program performance. For FY 2000, we are

looking for grants in the following priority areas:

(a) Improve the management of Undistributed Collections (UDC) in order to decrease or maintain low UDC balances.

(b) Foster collaboration between IV–D State agencies and partner entities and other states to improve interstate case processing.

Specific design specifications for each of these priority areas are set forth under Part II.

OCSE is committed to helping States make measurable program improvements that will enhance the lives of children. In addition, Special Improvement Projects will also be considered which do not fall into one of the specified priority areas but which are in furtherance of efforts under the Government Performance and Results Act (i.e. designing a performance based program), and furthering the goals of the national child support enforcement program—all children to have parentage established; all children in IV–D cases have financial and medical orders; and all children in IV–D cases receive financial and medical support) and advance the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Applicants should understand that OCSE will not award grants for special improvement projects which (a) duplicate automated data processing and information retrieval system requirements/enhancements and associated tasks which are specified in PRWORA; or (b) which cover costs for routine activities which should be normally borne by the Federal match for the Child Support Program or by other Federal funding sources (e.g. adding staff positions to perform routine CSE tasks or providing substance abuse services); OCSE also has the discretion not to award grants that duplicate existing demonstrations, special projects and/or contracts that cover similar project objectives and activities.

Proposals should be developed with these considerations in mind. Proposals and their accompanying budgets will be reviewed from this perspective.

B. Legislative Authority

Section 452(j), 42 U.S.C. 652(j) of the Social Security Act provides Federal funds for technical assistance, information dissemination and training of Federal and State staff, research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

Section 453 (42 U.S.C. 653) of the Social Security Act provides Federal funds to cover costs incurred for the operation of the Federal Parent Locator Service.

C. Availability of Funds

Approximately $2 million is available for FY 2000 for all priority areas. Refer to each priority area for estimated number of projects and funding. All grant awards are subject to the availability of appropriated funds. A non-Federal match is not required.

D. CFDA NUMBER

93.601—Child Support Enforcement Demonstrations and Special Projects.

Part II. Applicant and Project Eligibility

A. Eligible Applicants

Eligible applicants for these special improvement project grants are States (including Guam, Puerto Rico, and the Virgin Islands) Human Services Umbrella agencies, other State agencies (including State IV–D agencies), Tribes and Tribal Organizations, local public agencies (including IV–D agencies), nonprofit organizations, and consortia of State and/or local public agencies. The Federal OCSE will provide the State CSE agency the opportunity to comment on the merit of local CSE agency applications before final award. Given that the purpose of these projects is to improve child support enforcement programs, it is critical that applicants have the cooperation of IV–D agencies to operate these projects.

Preferences will be given to applicants representing CSE agencies and applicant organizations which have cooperative agreements with CSE agencies. All applications developed jointly by more than one agency organization must identify a single lead organization as the official applicant. The lead organization will be the recipient of the grant award. Participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors with their written authorization.

B. Project Priorities

The following are the specified priority areas for special improvement projects for FY 2000.

Priority Area 1—Improving the Management of Undistributed Collections (UDC)

1. Purpose: The purpose of this solicitation is to assist States to demonstrate new and or more effective methods, control procedures and models to decrease or maintain low UDC balances.

2. Background and Information: Undistributed collections balances vary greatly in amount and differ from State to State. These amounts are often quite significant in relation to total child support enforcement collections. Most states have attempted to address this problem over the years, but OCSE audits in some states underscore the difficulty of States' achieving substantial and permanent reductions.

3. Design Elements in the Application: In order to improve the management of UDC, OCSE is interested in projects which will provide a better understanding of the nature of undistributed collections and that develop effective/innovative processes to address at least one of the following key issues/areas:

(a) Design a strategy to demonstrate how well a State can improve its UDC balances by using the State Parent Locator Service (SPLS) and Federal Parent Locator Service (FPLS) to determine locations of the custodial parent and ensure more timely disbursement of child support collections.

(b) Develop effective methods to identify the nature/causes of UDC and develop approaches to reduce or eliminate them.

(c) Develop cost-effective procedures to ensure that all UDC are identified and reported accurately and according to Federal guidelines.

4. Project and Budget Periods: The project period for this priority area is up to 17 months.

5. Project Budget: It is estimated that there will be three to five grants (ranging from $100,000 to $300,000 for a total of $800,000).

Priority Area 2: Fostering Improved Interstate Case Processing

1. Purpose: The purpose of this solicitation is to assist States to demonstrate new and/or more effective methods, procedures and models to foster collaborative efforts between partner entities and states to improve interstate case processing.

2. Background and Information: The child support provisions of welfare reform required all States to adopt the Uniform Interstate Family Support Act (UIFSA) by January 1, 1998. UIFSA provides for uniform rules, procedures, and forms for interstate cases. OCSE has been working with states to implement UIFSA and has also developed standard Federal interstate CSE forms compatible with UIFSA. OCSE organized forums across the country for individuals representing UIFSA and the states to discuss and develop consensus methods for implementing administrative

enforcement, direct income withholding, discovery, long-arm, and paternity establishment in interstate cases. Subsequently, many states have managed to process interstate cases in an uniform manner. Although a great deal of progress has been made over the past couple of years, states are still facing many challenges in the implementation of UIFSA.

3. Design Elements in the Application: In order to foster collaboration to improve interstate case processing under UIFSA, OCSE is interested in projects which develop effective/innovative strategies that address one or more of the following key issues/areas:

(a) *Case Processing and the Courts:* What types of specific collaborative initiatives/methods between the courts and IV–D agencies would assist in processing interstate cases more efficiently and what procedures could help them more effectively use available UIFSA remedies and associated forms? How are States ensuring that the required data elements are correctly secured from courts and reported to IV–D agencies for transmission to the Federal Case Registry? What are the barriers between IV–D agencies and the courts that lead to inefficiencies and ineffective interstate case processing and how can they be overcome? What processes have states put in place to make controlling order determinations, to reconcile arrears under multiple orders, and to notify affected parties, including courts in each state? How can these processes be improved?

Too often IV–D agencies and the courts do not have procedures to notify each other when taking actions on interstate cases, resulting in duplicate efforts and delays. Thus, we want to identify collaborative initiatives/methods that help build communication, avoid duplicate efforts and delays in processing interstate cases.

(b) *Direct Withholding and Employers:* What are the benefits and pitfalls of using direct withholding under UIFSA compared to interstate income withholding from IV–D agency to IV–D agency in different States? What are solutions to any problems encountered? What happens if there is an obligor contest in a direct withholding case? Is abandoning the direct withholding the best solution or are there ways to resolve these issues through the IV–D agency in the employer State that preserves the direct withholding? What impact does direct income withholding have on other services required in a case? Does it work to do direct withholding and initiate an interstate IV–D case for other necessary enforcement action? In addition, what approaches are being used by IV–D agencies to encourage and foster employer cooperation in wage withholding for interstate cases? Currently, state IV–D agencies are educating employers on using Federally mandated forms for income withholding for their child support cases but more needs to be done to encourage employers' compliance for interstate cases.

(c) *State Clearinghouse Model:* What benefits would there be in establishing a State clearinghouse for handling requests from other states attempting direct enforcement other than wage withholding? States frequently encounter difficulties with the lien process and seizures in other states when attempting one-State interstate actions. At the same time, since the other State IV–D agency is not involved in these situations in the traditional way, they may not be able to provide adequate assistance. OCSE is interested in exploring alternatives to traditional methods of offering assistance to other states under direct enforcement for single or targeted remedies (e.g., lien registration, State lottery intercept, etc.). Different models for a clearinghouse could be proposed and the responsibilities and associated costs explored. Provision of selected services, such as enforcement counsel consultations, accessibility to local attorneys, intercession with local authorities, and intervention with non-responding banks and financial institutions (rather than locate and discovery functions), should be considered.

(d) *Administrative Enforcement of Interstate Cases:* With respect to high volume automated enforcement in interstate cases under PRWORA, what are promising practices for integrating these requests from other states into the assisting State's own data matching and attachment of assets (such as for financial institutions data matches and levies) in instate cases? What is the best way to avoid making these cases full blown interstate IV–D cases while being able to provide the data match and seizure of assets in an automated way and to keep track of information required to be reported on these cases?

(e) *Case Processing and Use of FPLS:* How is the Federal Parent Locator System (FPLS) data being integrated into the basic business functions of child support enforcement (i.e., intake, paternity establishment, order establishment/modification, enforcement and collections) to improve these business functions? What new and effective interstate locate methods/processes are being developed through this integration of FPLS data? How are these methods being implemented in an automated fashion? How are caseworkers being sold on the advantages of using ''new'' FPLS data? Are the levels of state automation and staffing adequate to deal with these new tools?

(f) *Tracking Outcomes for Data Matches:* What approaches are being used by IV–D agencies to monitor results, measure progress and manage interstate case processing more efficiently? The wealth of data provided from the National Directory of New Hires and the Federal Case Registry must be organized and managed in order to track results and program benefits. What methods have been adopted by States for tracking outcomes of data matches and how have results been utilized to demonstrate program benefits (*i.e.,* program methodology, benefit calculation methodology, reports, management information process, and performance measurements)?

(g) *Interstate Forms:* With respect to use of interstate forms for withholding, imposition of liens and issuance of administrative subpoenas under PRWORA, are there exemplary techniques for maximizing successful use of these tools in interstate cases? Are there potential problems that arise in their use and tested solutions to those problems? How can these forms be modified to better meet needs of States and other users? Are States able to use these forms electronically and how? What is needed to overcome barriers to electronic transmission through CSENet or other means?

(h) *Family Violence and Case Processing:* How can we ensure consistency in policy and procedures in cases affected by both the Family Violence Indicator and UIFSA section 312 (nondisclosure of information in exceptional circumstances) to ensure consistent and appropriate decision-making for interstate cases? In the UIFSA process, tribunals order information not to be released where a finding has been made that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information. Similarly, IV–D agencies place a Family Violence Indicator flag on an individual's record in the State Case Registry where there is a protective order in place or where the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the

child of such parent. Projects should develop approaches to demonstrate how best to coordinate these different decision-making processes for interstate cases. Projects should identify the benefits/impact of the approach on States' case processing. In addition, how can we provide courts with sufficient information upon which to base their override decisions of the Family Violence Indicator? Currently in the interstate context, one State will not know the basis for a decision of another State to flag a case with the Family Violence Indicator, and this lack of information may prove difficult for judges faced with requests to override the indicator.

(i) *International Child Support Enforcement:* What types of collaborative activities between a state or states and foreign jurisdictions would improve international child support cooperation, encouraging other nations to adopt additional UIFSA-like procedures? UIFSA includes provisions which extend IV–D cooperation to foreign nations with substantially similar procedures to UIFSA. Variations in procedures between national systems will require additional measures to be developed and implemented. IV–D agency experience in working cases with other nations will be a crucial factor in development, promulgation, and training regarding innovative techniques crucial to improving international cooperation. Projects should demonstrate methods to improve other nations' judicial and child support agency cooperation (e.g., procedures not requiring the physical presence of a petitioner for rendition of a judgement determining parentage, methods of not charging a mother for costs of paternity testing unless a paternity allegation is proven to be groundless, utilizing electronic communication and currency transfer mechanisms to improve security and lower costs) between one or more states and foreign jurisdictions.

4. Project and Budget Periods: Generally, project and budget periods for these projects will be up to 17 months. OCSE will consider projects up to 36 months, if unique circumstances warrant. If OCSE approves a project for a time period longer than 17 months, OCSE will provide funding in discrete 12-month increments, or ''budget periods.'' Funding beyond the first 12-month budget period is not guaranteed. Rather, future funding will depend on the grantee's satisfactory performance and the availability of future appropriations.

5. Project Budget: It is estimated that there will be one to four grants awarded (ranging from $100,000 to $600,000) for a total of $800,000 for this priority area.

Other

OCSE will target funding for projects which fall under the two priority areas described above. However, OCSE will also screen and evaluate smaller scale projects to cover projects outside the scope of these priority areas, consistent with the legislative authority described under Part I.B., subject to the availability of funds. Eligible applicants should describe how the special improvement project will improve the effectiveness of the child support program and promote a new focus on results, service quality, management/organizational innovations, outreach or public satisfaction.

Under this ''Other'' category, OCSE is particularly interested in (a) projects which focus on effective enforcement tools, foster cooperative relationships with law enforcement, or demonstrate other effective methods to increase collections; or (b) demonstration projects that test and evaluate model review and adjustment procedures that focus on one of the following four areas: (1) review and adjustment of child support orders at entrance and/or exit from the Temporary Assistance for Needy Families (TANF) Program; (2) review and adjustment of medical support orders; (3) targeting periodic review and adjustment by type of case; and (4) or targeting periodic review and adjustment of cases where the noncustodial parent is incarcerated or has no income.

Applicants should understand that OCSE will not award grants for special improvement projects which (a) duplicate automated data processing and information retrieval system requirements/enhancements and associated tasks which are specified in PRWORA; or (b) which cover costs for routine activities which should be normally borne by the Federal match for the Child Support Program or by other Federal funding sources (e.g. adding staff positions to perform routine CSE tasks or providing substance abuse services;) OCSE also has the discretion not to award grants that duplicate existing demonstrations, special projects and/or contracts that cover similar project objectives and activities.

It is estimated that there will be up to ten grants to be awarded in the ''Other'' category up to $50,000 each, and the project and budget period will be up to 17 months; however, review and adjustment demonstrations may be funded at an increased level for a project period up to thirty-six months, with a budget period of 12 months; additional funding beyond the first 12 months will depend on the availability of future appropriations.

Part III: The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its single point of contact (SPOC), if applicable, or to ACF.

As of August 23, 1999, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

Alabama, Alaska, American Samoa , Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements

as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, Office of Grants Management, Attention: Lillian Cash, Grants Management Specialist, 370 L'Enfant Promenade, S.W., 4th Floor, West Wing, Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

It is necessary that applicants state specifically which priority area they are applying for. Applications will be screened for priority area appropriateness. If applications are found to be inappropriate for the priority area in which they are submitted, applicants will be contacted for verbal approval of redirection to a more appropriate priority area.

C. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement. Proposed projects will be reviewed using the following evaluation criteria:

(1) Criterion I: Objectives and Need for Assistance (Maximum 25 Points)

The application should demonstrate a thorough understanding and analysis of the problem(s) being addressed in the project, the need for assistance and the importance of addressing these problems in improving the effectiveness of the child support program. The applicant should describe how the project will address this problem(s) through implementation of changes, enhancements and innovative efforts and specifically, how this project will improve program results. The applicant should address one or more of the activities listed under the ''Design Elements in the Application'' described above for the specific priority area they are applying for (refer to Part II.B. Project Priorities). The applicant should identify the key goals and objectives of the project; describe the conceptual framework of its approach to resolve the identified problem(s); and provide a rationale for taking this approach as opposed to others.

(2) Criterion II: Approach (Maximum: 30 Points)

A well thought-out and practical management and staffing plan is mandatory. The application should include a detailed management plan that includes time-lines and detailed budgetary information. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework. The plan should identify what tasks are required of any contractors and specify their relevant qualifications to perform these tasks. Staff to be committed to the project (including supervisory and management staff) at the state and/or local levels must be identified by their role in the project along with their qualifications and areas of particular expertise. In addition, for any technical expertise obtained through a contract or subgrant, the desired technical expertise and skills of proposed positions should be specified in detail. The applicant should demonstrate that the skills needed to operate the project are either on board or can be obtained in a reasonable time.

(3) Criterion III: Evaluation (Maximum: 30 Points)

The applicant should describe the cost effective methods which will be used to achieve the project goals and objectives; the specific results/products that will be achieved; how the success of this project can be measured and how the success of this project has broader application in furthering national child support initiatives and/or providing solutions that could be adapted by other states/jurisdictions. A discussion of data availability and outcome measures to be used should be included. Describe the collection and reporting system to be used.

(4) Criterion IV: Budget and Budget Justification (Maximum 10 Points)

The project costs need to be reasonable in relation to the identified tasks. A detailed budget (e.g., the staff required, equipment and facilities that would be leased or purchased) should be provided identifying all agency and other resources (i.e., state, community other program—TANF/Head Start) that will be committed to the project. Grant funds cannot be used for capital improvements or the purchase of land or buildings. Explain why this project's resource requirements cannot be met by the state/local agency's regular program operating budget.

(5) Criterion V: Preferences (Maximum 5 Points)

Preference will be given to those grant applicants representing IV–D agencies and applicant organizations who have cooperative agreements with IV–D agencies.

D. Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement. The length of the application, excluding the application forms and all attachments, should not exceed 20 pages. A page is a single-side of an 8½″ × 11″ sheet of plain white paper. The narrative should be typed double-spaced on a single-side of an 8½″ × 11″ plain white paper, with 1″ margins on all sides. Applicants are

requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process. Each page of the application will be counted (excluding required forms and certifications) to determine the total length.

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part III.C. The Administration for Children and Families Uniform Project Description in the application kit provides general requirements for these evaluation criteria (i.e., Objectives and Need for Assistance; Approach; Evaluation; Budget and Budget Justification).

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late and will not be considered in the competition.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, Attention: Mary Nash, 370 L'Enfant Promenade, S.W., 4th Floor West, Washington, D.C. 20447. Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s).

To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed). Express/overnight mail services should use the 901 D Street address instructions as shown below.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant using express/overnight mail services, will be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Attention: Mary Nash, Office of Grants Management, Office of Child Support Enforcement, and delivered at ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application. ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Dated: December 25, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 00–208 Filed 1–4–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–5522]

Food Irradiation Coalition c/o National Food Processors Association; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The National Food Processors Association, on behalf of The Food Irradiation Coalition, has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation for control of food-borne pathogens, and extension of shelf-life, in a variety of human foods up to a maximum irradiation dosage of 4.5 kilograys (kGy) for non-frozen and non-dry products, and 10.0 kGy for frozen or dry products.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3032.

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 9M4697) has been filed by The National Food Processors Association on behalf of The Food Irradiation Coalition, 1350 I St. NW., Suite 300, Washington, DC 20005. The petition proposes that the food additive regulations in part 179 *Irradiation in the Production, Processing and Handling of Food* (21 CFR part 179) be amended to provide for the safe use of ionizing radiation for control of food-borne pathogens, and extension of shelf-life, in a variety of human foods up to a maximum irradiation dosage of 4.5 kGy for non-frozen and non-dry products, and 10.0 kGy for frozen or dry products, including: (1) Pre-processed meat and poultry; (2) both raw and pre-processed vegetables, fruits, and other agricultural products of plant origin; (3) certain multi-ingredient food products. The petition does not cover products composed in whole or in part of raw meat, poultry, or fish nor does it cover ''ready-to-eat'' fish products or ingredients made from fish.

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 20, 1999

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–108 Filed 1–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Investigational Biological Product Trials; Procedure to Monitor Clinical Hold Process; Meeting of Oversight Committee and Request for Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the year 2000 meetings of its clinical hold oversight committee, which reviews the clinical hold orders that the Center for Biologics Evaluation and Research (CBER) has placed on certain investigational biological product trials. For each meeting, FDA is inviting any interested biological product company to use this confidential mechanism to submit to the committee for its review the name and number of any investigational biological product trial placed on clinical hold during the past 12 months that the company wants the committee to review

DATES: The meetings will be held on February 10, 2000; May 11, 2000; August 10, 2000; and November 9, 2000. Biological product companies may submit review requests for the February meeting by January 20, 2000; for the May meeting by March 30, 2000; for the August meeting by June 29, 2000; and for the November meeting by September 28, 2000.

ADDRESSES: Submit clinical hold review requests to Steven H. Unger, FDA Acting Ombudsman, Office of the Commissioner (HF–7), 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA's regulations in part 312 (21 CFR part 312) provide procedures that govern the use of investigational new drugs and biologics in human subjects. If FDA determines that a proposed or ongoing study may pose significant risks for human subjects or is otherwise seriously deficient, as discussed in the investigational new drug regulations, it may order a clinical hold on the study. The clinical hold is one of FDA's primary mechanisms for protecting subjects who are involved in investigational new drug or biologic trials. Section 312.42 describes the grounds for ordering a clinical hold.

A clinical hold is an order that FDA issues to a sponsor to delay a proposed investigation or to suspend an ongoing investigation. The clinical hold may be ordered on one or more of the investigations covered by an investigational new drug application (IND). When a proposed study is placed on clinical hold, subjects may not be given the investigational drug or biologic as part of that study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug or biologic, and patients already in the study should stop receiving therapy involving the investigational drug or biologic, unless FDA specifically permits it.

When FDA concludes that there is a deficiency in a proposed or ongoing clinical trial that may be grounds for ordering a clinical hold, ordinarily FDA will attempt to resolve the matter through informal discussions with the sponsor. If that attempt is unsuccessful, a clinical hold may be ordered by or on behalf of the director of the division that is responsible for the review of the IND.

FDA regulations in § 312.48 provide dispute resolution mechanisms through which sponsors may request reconsideration of clinical hold orders. The regulations encourage the sponsor to attempt to resolve disputes directly with the review staff responsible for the review of the IND. If necessary, the sponsor may request a meeting with the review staff and management to discuss the clinical hold.

CBER began a process to evaluate the consistency and fairness of practices in ordering clinical holds by instituting an oversight committee to review clinical holds (see 61 FR 1033, January 11, 1996). CBER held its first clinical hold oversight committee meeting on May 17, 1995, and plans to conduct further quality assurance oversight of the IND process. The review procedure of the committee is designed to afford an opportunity for a sponsor who does not wish to seek formal reconsideration of a pending clinical hold to have that clinical hold considered ''anonymously.'' The committee consists of senior managers of CBER, a senior official from the Center for Drug Evaluation and Research, and the FDA Chief Mediator and Ombudsman.

Clinical holds to be reviewed will be chosen randomly. In addition, the committee will review clinical holds proposed for review by biological product sponsors. In general, a biological product sponsor should consider requesting review when it disagrees with FDA's scientific or procedural basis for the decision.

Requests for committee review of a clinical hold should be submitted to the FDA Chief Mediator and Ombudsman, who is responsible for selecting clinical holds for review. The committee and CBER staff, with the exception of the FDA Chief Mediator and Ombudsman, are never advised, either in the review process or thereafter, which of the clinical holds were randomly chosen and which were submitted by sponsors. The committee will evaluate the selected clinical holds for scientific content and consistency with FDA regulations and CBER policy.

The meetings of the oversight committee are closed to the public because committee discussions deal with confidential commercial information. Summaries of the committee deliberations, excluding confidential commercial information, may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. If the status of a clinical hold changes following the committee's review, the appropriate division will notify the sponsor.

For each meeting, FDA invites biological product companies to submit to the FDA Chief Mediator and Ombudsman the name and IND number of any investigational biological product trial that was placed on clinical hold during the past 12 months that they want the committee to review. Submissions should be made by January 20, 2000, for the February meeting; by March 30, 2000, for the May meeting; by June 29, 2000, for the August meeting; and by September 28, 2000, for the November meeting to Steven H. Unger, FDA Acting Ombudsman (address above).

Dated: December 28, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–109 Filed 1–4–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1094–N]

Medicare Graduate Medical Education Consortia Demonstration

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the Medicare Graduate Medical Education (GME) Consortia demonstration, which will test how teaching hospitals and affiliated organizations respond to the incentive of shared direct GME payments. HCFA is interested in newly formed partnerships as well as already existing GME consortia. HCFA plans to conduct the demonstration with a limited number of consortia, to be chosen through a competitive

application process. An application package can be obtained from HCFA, which describes the demonstration and the criteria to be used in reviewing applications. Applications are due to HCFA 90 days after the publication of this notice.

DATES: Closing date for submission of applications will be April 4, 2000, 5 p.m. E.S.T.

APPLICATIONS: To receive an application package, and for further information, contact Sid Mazumdar, (410) 786–6673.

ADDRESSES: Mail correspondence to the following: Health Care Financing Administration, Room C4–14–15, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Attention: Sid Mazumdar.

I. Background

Section 4628 of the Balanced Budget Act of 1997 requires a demonstration which will permit direct Graduate Medical Education payments ordinarily paid to a teaching hospital to be paid to a consortium. According to the legislation, a qualifying consortium is to consist of a teaching hospital (with one or more residency programs) and at least one of the following: a school of allopathic or osteopathic medicine, another teaching hospital (which can be a children's hospital), a Federally Qualified Health Center, a medical group practice, a managed care entity, or an entity furnishing outpatient services. The legislation gives authority to the Secretary of Health and Human Services to expand the definition of an organization qualified to participate in a consortium.

Organizations that are already established will be able to begin the demonstration in July 2000. Other consortia will begin with the demonstration payment in July 2001. No consortium projects will begin after the summer of 2001. Applying consortia must provide letters of commitment demonstrating that all participating organizations agree to the proposed system of governance and methodology for distributing funds. HCFA will evaluate applications on how the proposed project will help achieve stated goals; the system of administration and decision making; plans for quality improvement and evaluation; and staff and capability for education and training. Applicants will be evaluated according to a numerical scoring system corresponding to the specific criteria that are described in the application.

II. Payment Methodology

HCFA will pay to the consortium the fraction (or entirety) of the direct Graduate Medical Education (GME) payment of the teaching hospital(s) that the consortium agrees upon, subject to HCFA's approval. This amount will be subtracted from HCFA's payment to the teaching hospitals. The demonstration will be budget neutral, that is, it will allow no more money to be paid to the consortium than what the direct GME payment would otherwise have been to its participating entities. The application package contains a more detailed explanation of the payment methodology.

Authority: Section 4628 of the Balanced Budget Act of 1997, Public Law 105–33.

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Financing, Demonstrations, and Experiments)

Dated: December 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–121 Filed 1–4–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3028–N]

Medicare Program; Notice of the Solicitation for Proposals To Expand the Medicare Lifestyle Modification Program Demonstration

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces our solicitation for proposals to expand the Medicare Lifestyle Modification Program Demonstration to one additional, national multi-site cardiovascular lifestyle modification program. The purpose of this demonstration is to test the feasibility and cost-effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries. This demonstration will test proven and intensive programs designed to reduce or reverse the progression of cardiovascular disease of patients at risk for invasive treatment procedures. The expansion will allow for a comparison between two different lifestyle modification models across several factors, including price. The demonstration began October 1, 1999 and will be conducted over a 4-year period. Currently, the demonstration is being implemented at several sites subscribing to one multi-site lifestyle modification program model. Enrollment for each multi-site program is limited to 1,800 Part B eligible Medicare beneficiaries who satisfy specific clinical admission criteria.

DATES: *Letters of Intent:* Letters of Intent must be received by the HCFA project officer by February 4, 2000.

Proposals: Proposals (an original and 5 copies), each with a copy of the timely letter of intent, must be received by the HCFA project officer by April 4, 2000.

ADDRESSES: *Letters of Intent and Proposals:* Department of Health and Human Services, Health Care Financing Administration, Attention: Armen Thoumaian, Ph.D., Project Officer, Medicare Lifestyle Modification Program Demonstration, Office of Clinical Standards and Quality, Mail Stop: S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Demonstration Website: www.hcfa.gov/quality/qlty-3.htm.

FOR FURTHER INFORMATION CONTACT: Armen Thoumaian, Ph.D., (410) 786–6672, or e-mail Athoumaian@hcfa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Problem

Research has provided evidence that specific lifestyle changes can lead to a decrease in the levels of cardiovascular risk factors, resulting in lower morbidity and mortality associated with coronary artery disease (CAD). Lifestyle modification programs are increasingly becoming an approach to the secondary prevention of coronary disease morbidity. The programs may reduce the incidence of hospitalizations and invasive procedures among patients with substantial coronary occlusion.

Studies have shown that controlling single risk factors such as a low-fat diet, smoking cessation, exercise, or stress management are beneficial in the treatment of cardiovascular disease. Other psycho-social risk factors, including depression and social isolation, have already been shown to be important. Multi-factorial risk reduction programs that include reduction of some or all of these risk factors in a comprehensive cardiovascular lifestyle management program, however, have yet to be evaluated for their effectiveness or long-term cost savings in the Medicare population.

We currently pay for 12 weeks of cardiac rehabilitation services for Medicare patients who have a prior

diagnosis of myocardial infarction or who have had a recent cardiac revascularization procedure or both. Coverage under the Medicare cardiac rehabilitation benefit is more limited than that contained in a comprehensive lifestyle modification program. We are investigating the benefits of covering a complete package of services offered under an established, national multi-site lifestyle modification program. Lessons learned from this demonstration will provide us with information needed to explore the possibility of providing this type of program as an alternative to more customary medical management (for example, medications, angioplasty, and heart bypass surgery) when medication is not effective.

B. Demonstration Description

Through our Office of Clinical Standards and Quality (OCSQ), we published a notice in the **Federal Register** that announced our implementation of a demonstration to evaluate the feasibility and cost-effectiveness of cardiovascular lifestyle modification (64 FR 53394, October 1, 1999). The demonstration period began on October 1, 1999 and will provide a 3-year enrollment period ending on October 1, 2002, with payment through September 30, 2003 (for a total of 4 years). Enrollment in the demonstration is limited to Part B eligible Medicare beneficiaries who meet specific clinical criteria that document significant cardiovascular disease.

There are many cardiovascular lifestyle modification programs across the country. Each varies in program length, treatment services offered, and program cost. Few of these programs have published results about their success in reducing coronary artery disease. This demonstration began at sites licensed to conduct the 12-month long Dr. Ornish Program for Reversing Heart Disease®. These facilities offer a cardiovascular lifestyle modification program where the treatment length and the type and amount of services offered are standardized. In addition, although limited, there are published studies about this program that provide some degree of evidence of its success in reducing or reversing the progression of cardiovascular disease in patients who complete the program. Beginning a demonstration with these facilities was a logical choice to provide a standard of care and quality oversight for Medicare beneficiaries. The standardized program also means that a single price can be negotiated for program enrollment across the sites. Total enrollment for this multi-site program is limited to 1,800 Part B eligible Medicare beneficiaries who satisfy clinical admission criteria.

C. Clinical Criteria for Beneficiary Enrollment Under the Demonstration

Under this Medicare demonstration, we pay for a package of specific services that we do not cover under the regular Medicare program. Under these circumstances, the appropriateness of care provided is of obvious concern. The criteria for enrollment in the demonstration reflect clinical standards to ensure the services offered can provide the most appropriate and beneficial treatment to those enrolled. We are interested in a treatment from which the Medicare patient can experience a measurable and immediate benefit with a potential for a lifetime benefit. In this case, we are interested in treatment that brings about the reversal of coronary artery occlusion, amelioration of symptoms from coronary artery disease, or some other positive, observable change in the patient's condition. We require that the Medicare beneficiaries who meet the clinical criteria for enrollment under the demonstration will be only people with substantial CAD.

The program sites selected for this demonstration must add specific requirements to their admission screening criteria. First, patients participating in the demonstration must have Part B Medicare eligibility at the time of enrollment. Second, we require the following four clinical criteria under the demonstration for enrollment of Medicare beneficiaries:

1. The presence of angina as a medical condition for each Medicare beneficiary.

2. One of the following diagnostic studies, which demonstrate clinically significant ventricular myocardium at risk for infarction (EKG/stress testing/angina surveys without additional imaging studies will not be accepted):

a. Coronary angiogram (with estimated ejection fraction) demonstrating lesions in certain vessels—

Greater than 70 percent left anterior descending coronary artery (LAD).

Greater than 70 percent right coronary artery (RCA).

Greater than 70 percent left circumflex coronary artery.

Greater than 50 percent left main coronary artery.

b. Reversible perfusion defect on nuclear imaging study.

c. Inducible wall motion abnormality on stress echo.

d. Cardiac positron emission tomography (PET) scan with rubidium-82 showing perfusion defect.

3. The beneficiary's physician must have recommended that, as an option, the beneficiary undergo revascularization (coronary artery bypass graft (CABG) or angioplasty) in the near future. The beneficiary's physician must be comfortable that the beneficiary is clinically stable to undergo comprehensive lifestyle changes as an alternative intervention.

4. The beneficiary must be willing to make these comprehensive lifestyle changes.

Finally, a beneficiary with any of the following clinical criteria is excluded from participating in the demonstration:

1. Acute myocardial infarction within the 2-week period before enrollment.

2. Left main disease greater than 50 percent occlusion.

3. Three-vessel disease with decreased ejection fraction.

4. Unstable angina.

5. CABG surgery within 4 weeks of enrollment (unless otherwise approved for participation by his or her physician).

6. Previous angioplasty within 6 months of enrollment.

7. Hypotensive response to exercise (greater than 20 mm Hg drop in systolic pressure).

8. History of exercise-induced ventricular tachycardia or third degree heart block without evidence of current stability.

9. Non-ischemic cardiomyopathy (EF less than 40 percent), without evidence of significant CAD.

10. Class IV congestive heart failure (CHF).

11. History of malignant ventricular arrhythmia or use of automatic implantable defibrillator.

12. Residence beyond 90 minutes commuting time to the program site.

13. Significantly impaired cognitive function (for example, dementia).

14. Potentially fatal co-morbidity (for example, metastatic cancer) and unlikely to survive 1 year after entrance into the project.

The selected demonstration sites of the multi-site program must assure that the criteria for inclusion have been met and that none of the exclusion criteria are present for any Medicare beneficiary seeking enrollment in the program. In addition, each beneficiary's personal physician must certify that the beneficiary meets the clinical eligibility requirements to participate in the cardiovascular lifestyle modification program before the beneficiary enrolls in the program.

D. Quality Monitoring and Evaluation

The continuous monitoring of the quality of care delivered to Medicare

beneficiaries undergoing lifestyle modification and a continuous assessment of possible health risks to individual beneficiaries are essential during this demonstration. We have contracted a Medicare Peer Review Organization to provide continuous quality monitoring of the demonstration sites to help assure the safety of Medicare patients. In addition, we will conduct an evaluation of the demonstration through a separate contract with an independent research firm to determine the feasibility and cost-effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries. The evaluation will compare the outcomes of Medicare beneficiaries participating in the demonstration with other Medicare beneficiaries, matched according to disease severity and other characteristics, who are receiving more customary treatments for coronary artery disease. Specifically, we are interested in comparing the outcomes of beneficiaries who go through the demonstration with Medicare beneficiaries who are recommended for re-vascularization but initially opted for medical management. Demonstration sites selected must cooperate with the quality monitoring and review contractor and the evaluation contractor.

II. Provisions of This Notice

A. Purpose

We are interested in expanding the Medicare Lifestyle Modification Program Demonstration. The expansion will allow us to compare different lifestyle modification models across several factors, including price. We are limiting the expanded demonstration to one additional, national multi-site cardiovascular lifestyle modification program offering a 12-month multi-disciplinary clinical outpatient program of lifestyle modification services to Medicare beneficiaries through a program currently provided to the general public. We will pay for a program of lifestyle modification treatment services for up to 1,800 Medicare beneficiaries diagnosed with severe CAD who enroll before October 1, 2002.

This notice announces our solicitation for proposals from established, national multi-site lifestyle modification programs having the characteristics listed in section II.B. of this notice. All interested offerors must provide a full description of their program characteristics, so that we can make an award determination based on the organization, the quality and safety of the program, and the capability to recruit a sufficient number of Medicare beneficiaries. A Letter of Intent and Proposal from the parent entity licensing, franchising, or otherwise representing the multi-site lifestyle modification program are required as described in sections II.B. and II.C. of this notice.

We will negotiate a fixed payment rate with an entity representing all of the licensed sites participating in the parent program. We will present sites licensed by the parent program with the negotiated rate agreement and demonstration protocol and ask them to consider participating in the demonstration. We will ask those sites that agree to participate to enter into individual agreements with us to abide by the terms and conditions for participation in the demonstration. Demonstration sites will receive the negotiated fixed rate (absent inflationary adjustments) for the completed program. We will monitor quality and evaluate the demonstration as described earlier to determine if this service would benefit the Medicare population.

Under the demonstration, we will pay all approved sites of the multi-site program 80 percent of the negotiated fixed payment amount for the complete treatment episode when a beneficiary completes the 12-month program. If there is a beneficiary disenrollment from the program before completing the 12-month program, we will pay the demonstration site a pro-rated portion of the total payment for that beneficiary. This payment amount will apply to treatment at all participating demonstration sites in the multi-site program and remain fixed during the demonstration period. The demonstration site may collect the remaining 20 percent of the fixed payment amount from the beneficiary as a program or enrollment fee. Under the demonstration, an individual site may elect to waive this fee, but if it chooses to do so, it must waive it for all Medicare beneficiaries who enroll in the demonstration. As part of the proposal, applicants must propose an all-inclusive payment amount for the complete 12-month lifestyle modification program to be offered to Medicare beneficiaries. The selectee must cooperate with quality monitoring efforts and the formal evaluation of the demonstration. We will provide no additional funding.

B. Letter of Intent

An organization that believes it meets the requirements of section II.C. of this notice must submit a Letter of Intent to submit a Proposal. The signed Letter of Intent must be received by the HCFA project officer by the date in the **DATES** section of this notice. The Letter of Intent must indicate the applicant's intention to submit a completed Proposal for the demonstration. Submitting a Letter of Intent does not obligate the applicant to submit a Proposal. The letter must be signed by a duly authorized official and include the following information about the applicant:

—Name.
—Address.
—Contact person.
—Business telephone number.
—All existing HCFA provider number(s).
—An Employer Identification Number (EIN) for basic identification purposes.

The HCFA project officer, or designee, will contact the specified representative (contact person) for each timely submitted Letter of Intent to discuss the application process. Organizations that submit a timely Letter of Intent must submit a completed original Proposal and 5 copies (along with a copy of the previously submitted Letter of Intent) to the HCFA project officer by the date in the **DATES** section of this notice.

C. Proposals of Eligible Organizations

The offeror must provide information describing the nature of its program, how it is perceived as innovative, and any scientifically based evidence supporting the success of its program in reducing the need for inpatient invasive procedures. We are interested in Proposals from a national, multi-site lifestyle modification program that can satisfy the requirements of this section. We will consider only proposals that are responsive to the requirements for submission under this solicitation. Proposals must be no more than 45 pages in length, including appendices and attachments. Our technical review panel will review and consider only those Proposals that we receive by the date in the **DATES** section of this notice and for which we receive a timely Letter of Intent.

A program that wishes to be considered for this payment demonstration must submit a Proposal that includes evidence of the following:

1. The existence of a parent organization that has developed, designed, and continuously monitored its program. The parent organization must have legal responsibility for the licensing of its affiliates and must provide to its licensees all proprietary, clinical, marketing, and administrative materials. A standardized package of

instructions must be available in the form of manuals, audiotapes, and videotapes and must be provided to all sites as part of the licensing arrangement.

2. A list of multiple sites or affiliates that are located in various geographic locations throughout the United States and that use the parent organization's name and are recognized as entities of the parent organization. The parent organization must provide initial on-site training to all affiliated staff and schedule regular on-site visits to ensure adherence to the prescribed regimen.

3. A standardized protocol that describes the program in detail and includes a prescription of a low-fat diet, lifestyle counseling, nutrition education, supervised exercise, stress management training, group support, and smoking cessation. In addition, the protocol must provide for medical lipid management. The protocol must have a defined treatment plan that provides the length of the regimen and the sessions (by frequency and time). Patient and staff goals must be specified. The manual must contain a description of staffing needs, educational requirements, and the roles and responsibilities of all personnel.

4. A formal management plan that describes the coordination of reporting and communicating to the affiliated sites (for example, regular phone conferences, annual or bi-annual retreats, and electronic messaging). A recognized program or site coordinator must act as a liaison at the parent site to provide guidance and address issues that arise during day-to-day operations.

5. A minimum of 3 years of continuous operation using the standardized protocol. Affiliates must have a minimum of 1 year of experience in providing the same standardized services and should be recognized as a part of, or operate under, a larger corporate entity that is a Medicare provider.

6. A record of successful marketing of its program to, or its use by, the age 65 and over population, including the under-served and minority populations.

7. A record of successful patient adherence to the program.

8. Coverage by a minimum of one major private insurer.

9. The capability or potential of receiving and transmitting information electronically between its sites and HCFA.

This notice is not covered by the Paperwork Reduction Act of 1995 and accordingly was not reviewed by the Office of Management and Budget. In accordance with Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

We have examined this notice in accordance with Executive Order 13132, Federalism, and have determined that it will not have any negative impact on the rights, roles, or responsibilities of State, local, or Tribal governments.

Authority: Sections 402(a)(1)(G) and (a)(2) of the Social Security Amendments of 1967 (Public Law 90–248), as amended (42 U.S.C. 1395b–1(a)(1)(G) and (a)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.779; Health Financing, Demonstrations, and Experiments)

Dated: December 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–125 Filed 1–4–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3029–WN]

Medicare Program; Cancellation of the Meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee—January 19 and 20, 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting cancellation.

SUMMARY: This notice announces the cancellation of the January 19 and 20, 2000 meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee (MCAC).

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Executive Secretary, 410–786–4631.

SUPPLEMENTARY INFORMATION: This notice announces the cancellation of the January 19 and 20, 2000 meeting of the Medical and Surgical Procedures Panel of the MCAC. Notice of the meeting was given on December 13, 1999 (64 FR 69538). The meeting will be rescheduled and announced in a subsequent **Federal Register** notice.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 14, 1999.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 00–123 Filed 1–4–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 62, No. 85, pp. 24122, 24123, and 24124, dated Friday, May 2, 1997) is amended to update the Office of Communications and Operations Support (OCOS) and the Center for Beneficiary Services (CBS) functional statements to reflect the transfer of the Agency's beneficiary-centered communications functions from OCOS to CBS. CBS made additional changes to the organization's functional statement to more accurately reflect the Center's responsibilities.

The specific amendments to Part F are described below.

Section F.20.A.5. (Functions), paragraph 6, Office of Communications and Operations Support (FAL) and paragraph 10, Center for Beneficiary Services (FAQ), are amended by deleting both organizations' functional statements in their entirety and replacing them with the following:

6. Office of Communications and Operations Support (FAL)

- Serves a neutral broker coordination role, including scheduling meetings and briefings for the Administrator and coordinating communications between and among central and regional offices, in order to ensure that emerging issues are identified early, all concerned components are directly and fully involved in policy development/decision-making and that all points of view are presented.
- Coordinates and monitors assigned agency initiatives which are generally tactical, short-term and cross-component in nature (*e.g.,* legislative implementation).
- Provides operational and analytical support to the Executive Council.
- Manages speaking and meeting requests for or on behalf of the

Administrator, Deputy Administrator, and Executive Associate Administrator and researches and writes speeches.

• Coordinates agency-wide communication policies for correspondence, manuals, regulations, and responses to audits.

• Coordinates the preparation of manuals and other policy instructions to insure accurate and consistent implementation of the Agency's programs.

• Manages the Agency's system for developing, clearing and tracking regulations, setting regulation priorities and corresponding work agendas; coordinates the review of regulations received for concurrence from departmental and other government agencies and develops routine and special reports on the Agency's regulatory activities.

• Manages the agency-wide clearance system to insure appropriate involvement from agency components and serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary.

• Operates the agency-wide correspondence tracking and control system and provides guidance and technical assistance on standards for content of correspondence and memoranda.

• Provides management and administrative support to the Office of the Attorney Advisor and staff.

• Acts as audit liaison with the General Accounting Office (GAO) and the HHS Office of Inspector General (OIG).

• Develops and maintains Agency-wide executive management information reporting and tracking systems (including the Management Reform Initiative and Reports to Congress) significant item reports, legislative (Balanced Budget Act) implementation, and management information reports for the Office of the Administrator.

• Acts as the committee management official for HCFA under the Federal Advisory Committee Act (FACA).

• Develops standard processes for all HCFA FACA committees and provides operational and logistical support to HCFA components for conferences and on all matters relating to Federal Advisory Committees.

10. Center for Beneficiary Services (FAQ)

• Serves as the focal point for all Agency interactions with beneficiaries, their families, care givers, health care providers, and others operating on their behalf concerning improving beneficiary ability to make informed decisions about their health and about program benefits administered by the Agency. These activities include strategic and implementation planning, execution, assessment and communications.

• Assesses beneficiary and other consumer needs, develops and oversees activities targeted to meet these needs, and documents and disseminates results of these activities. These activities focus on agency beneficiary service goals and objectives and include: development of baseline and ongoing monitoring information concerning populations affected by agency programs; development of performance measures and assessment programs; design and implementation of beneficiary services initiatives; development of communications channels and feedback mechanisms within the Agency and between the Agency and its beneficiaries and their representatives; and close collaboration with other Federal and state agencies and other stakeholders with a shared interest in better serving our beneficiaries.

• Develops national policy for all Medicare Parts A, B, and C beneficiary eligibility, enrollment, entitlement; premium billing and collection; coordination of benefits; rights and protections; dispute resolution process; as well as policy for managed care enrollment and disenrollment to assure the effective administration of the Medicare program, including the development of related legislative proposals.

• Oversees the development of privacy and confidentiality policies pertaining to the collection, use, and release to individually identifiable data.

• Coordinates beneficiary-centered information, education, and service initiatives.

• Develops and tests new and innovative methods to improve beneficiary aspects of health care delivery systems through Title XVIII, XIX, and XXI demonstrations and other creative approaches to meeting the needs of agency beneficiaries.

• Assures, in coordination with other centers and offices, the activities of Medicare contractors, including managed care plans, agents, and state agencies meet the Agency's requirements on matters concerning beneficiaries and other consumers.

• Plans and administers the contracts and grants related to beneficiary and customer service, including the State Health Insurance Assistance Program grants.

• Formulates strategies to advance overall beneficiary communications goals and coordinates the design and publication process for all beneficiary-centered information, education, and service initiatives.

• Builds a range of partnerships with other national organizations for effective consumer outreach, awareness, and education efforts in support of Agency programs.

• Serves as the HCFA lead for Medicare carrier and fiscal intermediary management, oversight, budget, and performance issues.

• Functions as HCFA liaison for all Medicare carrier and fiscal intermediary program issues and, in close collaboration with the regional offices and other HCFA components, coordinates the agency-wide contractor activities.

• Manages contractor instructions, workload, and change management process.

• Collaborates with other HCFA components to establish ongoing performance expectations for Medicare contractors (carriers and fiscal intermediaries) consistent with the agency's goals; interpret, evaluate, and provide information on Medicare contractors in terms of ongoing compliance with performance requirements and expectations; evaluate compliance with issued instructions; evaluate contractor-specific performance and/or integrity issues; and evaluate/monitor corrective action, if necessary.

• Manages, monitors, and provides oversight of contractor (carriers and fiscal intermediaries) transition activities including replacement of departing contractors and the resulting transfer of workload, functional realignments, and geographic workload carveouts.

• Maintains and provides accurate contractor specific information. Develops and implements long-term fee-for-service contractor strategy, tactical plans, and other planning documents.

• Serves as lead on current/proposed legislation in order to determine impact on contractor operations.

Dated: December 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–122 Filed 1–4–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHSS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227; 414–328–7840/800–877–7016
(Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210; 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103; 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229; 513–585–9000
(Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151; 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412; 702–733–7866/800–433–26750

Baptist Medical Center, Toxicology Laboratory, 9601 1–630, Exit 7, Little Rock, AR 72205–7299; 501–202–2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802; 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802; 800–876–3652/417–269–3093
(Formerly: Cox Medical Centers)

Dept. of the Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819; 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913; 941–561–8200/800–735–5416

Doctors Laboratory Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604; 9132–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104; 206–386–2672/800–898–0180
(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories, * 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4; 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park, Dr., Oxford, MS 38655; 601–236–2609

Gamma-Dynacare Medical Laboratories *, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4; 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715; 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037; 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636; 309–671–5199/800–752–1835
(Formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136; 305–325–5784
(Formerly: Cedars Medical Center, Department of Pathology)

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053; 504–361–8989/800–433–3823
(Formerly: Laboratory Specialists, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709; 919–572–6900/800–833–3984
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., a Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories Inc., a Members of the Roche Group)

Laboratory Corporation of America Holdings; 4022 Willow Lake Blvd., Memphis, TN 38118; 901–795–1515/800–233–6339
(Formerly: LabCorp Occupational

Testing Services, Inc., MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219; 913–888–3927/800–728–4064
(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869; 908–526–2400/800–437–4986
(Formerly: Roche Biomedical Laboratories, Inc.)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449; 715–389–3734/800–311–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1; 905–890–2555
(Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614; 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112; 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232; 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417; 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304; 661–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124; 801–268–2431/800–322–3361
(Formerly: NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536; 713–920–2559
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11thAve., Eugene, OR 97440–0972; 541–687–2134
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367; 818–589–3110
(Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206; 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025; 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division; 7606 Pebble Dr., Fort Worth, TX 76118; 817–214–8800
(Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210; 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111; 619–279–2600/800–882–7272
Quest Diagnostics Inc., 3175 Presidential Dr., Atlanta, GA 30340; 770–452–1590
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Inc., 4444 Giddings Road; Auburn Hills, MI 48326; 810–373–9120/800–444–0106
(Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Inc., National Center For Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227; 410–536–1485
(Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Inc., 8000 Sovereign Row, Dallas, TX 75247; 214–638–1301
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Inc., 4770 Regent Blvd., Irving, TX 75063; 972–916–3376/800–526–0947
(Formerly: Damon Clinical Laboratories, Daman/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Inc., 801 East Dixie Ave., Leesburg, FL 34748; 352–787–9006
(Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Inc., 400 Egypt Rd., Norristown, PA 19403; 610–631–4600/800–877–7484
(Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Inc., 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610; 412–920–7733/800–574–2474
(Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Inc., 506 E. State Pkwy., Schaumburg, IL 60173; 800–669–6995/847–885–2010
(Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Inc., 7470 Mission Valley Rd., San Diego, CA 92108–4406; 619–686–3200/800–446–4728
(Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Scheutz Rd., St. Louis, MO 63146; 314–991–1311/800–288–7293
(Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Inc., One Malcolm Ave., Teterboro, NJ 07608; 201–393–5590
(Formerly: MetPath, Inc. CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Inc., 7600 Tyrone Ave., Van Nuys, CA 91405; 818–989–2520/800–877–2520
(Formerly: SmithKline Beecham Clinical Laboratories)
Quest Diagnostics LLC (IL), 1355 Mittel Blvd., Wood Dale, IL 60191; 630–595–3888
(Formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121; 800–677–7995
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236; 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504; 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109; 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601; 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283; 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915; 517–377–0520
(Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101; 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202; 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166; 305–593–2260

UNILAB, 18408 Oxnard St., Tarzana, CA 91356; 818–996–7300/800–492–0800

(Formerly: MetWest/BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, TX 79706; 915–561–8851/888–953–8851

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (Federal Register, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 Federal Register, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–233 Filed 1–4–00; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Privacy Act of 1974; Creation of a New System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new system of records, INTERIOR/BLM–35, to be maintained by the Bureau of Land Management (BLM).

This system of records is being established by the BLM to provide and maintain a new automated collections and billings system, to replace the paper processing system previously used by BLM. The purpose of this system is to track the money owed the BLM, issue bills, and collect funds due the BLM in compliance with the Debt Collection Act of 1987.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget (OMB), in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this new system of records may do so by submitting comments in writing to the BLM Privacy Act Officer, Information Resources Management Policy Group, Department of the Interior, WO520/725 LS, 1849 C. St. NW, Washington, DC 20240. Comments received on or before February 14, 2000, will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the OMB, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations have been notified of this action.

The new system description, ''Collections and Billings System'' INTERIOR/BLM–35 will read as set forth below.

Dated: December 20, 1999.

Michael D. Nedd,

Deputy Assistant Director, Information Resources Management.

INTERIOR/BLM–35

SYSTEM NAME:

Collections and Billings System (CBS)-Interior, BLM–35.

SYSTEM LOCATION:

This Collections and Billings database will be maintained at the following Bureau of Land Management (BLM) locations U.S. Department of the Interior (DOI), BLM, National Business Center (NBC) Denver Federal Center, Building 40, Denver, Colorado 80225–0047. The BLM Field Offices listed below in the ''System Manager and Address'' section will be able to access pertinent information in the system via the Intranet.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any business or individuals transacting financial actions with the Bureau of Land Management. Only records reflecting personal information are subject to the Privacy Act. This system also contains records concerning corporations and other business entities, but these records are not subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 31 U.S.C. 3512, (2) 31 U.S.C. 3711 through 3719, (3) 41 CFR part 301–304, (4) the Treasury Financial Manual, (5) the Debt Collection Act of 1982, Pub. L. 97–365, 96 Stat. 1749, as amended by Pub. L. 98–167, 97 Stat. 1104, and Debt Collection Improvements Act of 1996, Pub. L. 104–134, 110 Stat. 1321(6) 26 U.S.C. 6103 (m)(2), and (7) 5 U.S.C. 5514.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, social security numbers, tax identification numbers, reasons for payment and debt, method of payment (including checking account number, check number, or credit card information), amounts owed, routine billing and payment information used in accounting and financial processing, and information from processing purchases via the Internet.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are to maintain accounting and financial information associated with the normal accounting procedures of the BLM.

Specifically, the system will be used for the billing of uses of public lands (such as, collection of payments for recreation sites, sand and gravel extraction, and timber harvesting). It is also used for billing of other goods and services received from BLM received (such as declining deposit accounts in BLM public rooms), follow-up, updating program files when payments are made, and accounting for monies. It will also include money which BLM employees owe the Bureau. Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records or information contained in this system may be disclosed outside the DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when:

(a) The United States, the DOI, a component of the DOI, or an employee of the DOI who is represented by the government is a party to litigation or

anticipated litigation, or has an interest in such litigation; and

(b) The DOI determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

(2) To Federal, state, local, or foreign agencies responsible for investigating, prosecuting, enforcing, or implementing a statute, regulation, rule, or order, where the BLM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

(3) To congressional offices in response to a request for information on behalf of, and at the request of the individual who is the subject of the records.

(4) To the U.S. Minerals Management Service and Department of the Treasury to effect payment to Federal, state, and local government agencies, non-governmental organizations, and individuals.

(5) To consumer reporting agencies to facilitate collection of debts owed the Government,

(6) To disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS to collect debts owed to the Federal government through the offset of tax refunds.

(7) To other Federal agencies for the purpose of collecting debts owed to the Federal government by administrative or salary offset.

(8) To other Federal agencies for the purpose of collecting debts owed to the Federal government when the other agency acts as a BLM-authorized collections officer.

(9) To any other Federal, state or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for the recoupment of debts owed to the Bureau of Land Management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on a magnetic media organized and accessed by database management software.

RETRIEVABILITY:

Indexed by name, case serial or other identifying number, appropriation, fund code, order and transaction numbers, organization code, social security number, taxpayer identification number.

SAFEGUARDS:

Safeguards for the CBS conform to the OMB and Departmental guidelines reflecting the implementation of the Computer Security Act of 1987, 40 U.S.C. 759. Data protection will be secured through user identification, passwords, database permissions, and software controls. This will be applied to all installations (see listing of location sites provided in the ''System Manager and Address'' section of the notice). Because some of the information will be transmitted electronically via the Intranet, standard industry security practices will be used to secure such electronic transmissions.

Such security measures will allow different access levels to different types of users. For example certain access levels will allow the BLM employees to only query portions of the database, while others access levels will be given to specific Bureau employees for entering new collections and billings information, and updating or editing existing information. Higher levels of access allow changes to the system, authorization of passwords, corrective maintenance of the software, and security controls to be imposed or lifted.

RETENTION AND DISPOSAL:

Records in the CBS are covered by the Treasury Financial Manual, the National Archives and Records Administration (NARA) General Records schedules, and NARA approved Agency Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Officials responsible for the Headquarters and Field Office system of records specific to that oversight are provided in the listing below:

A. Headquarters Office:

Assistant Director, Business and Fiscal Resources, Bureau of Land Management (WO–800), Department of the Interior, MIB—Room 5617, 1849 C Street, NW., Washington, DC 20240.

B. Field Offices:

Office Director, Bureau of Land Management, National Business Center, Building 40, P.O. Box 25047, Denver Federal Center, Denver, Colorado 80225–0047.

Deputy State Director, Administration, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue Number 13, Anchorage, Alaska 99513–5076.

Deputy State Director, Administration, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203.

Deputy State Director, Administration, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, California 95825–0451.

Deputy State Director, Administration, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

Deputy State Director, Administration, Bureau of Land Management, Eastern States, (Area of administration: All States bordering on, and east of the Mississippi River), 7450 Boston Boulevard, Springfield, Virginia 22153.

Deputy State Director, Administration, Bureau of Land Management, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709–1657.

Deputy State Director, Administration, Bureau of Land Management, Montana State Office, (Area of Administration: Montana, North Dakota, South Dakota), P.O. Box 36800, Billings, Montana 59107–6800.

Deputy State Director, Administration, Bureau of Land Management, Nevada State Office, 850 Harvard Way, PO Box 12000, Reno, Nevada 89520–0006.

Deputy State Director, Administration, Bureau of Land Management, New Mexico State Office, (Area of administration: New Mexico, Kansas, Oklahoma, Texas), 1474 Rodeo Road, Box 27115, Santa Fe, New Mexico 87502–0115.

Deputy State Director, Administration, Bureau of Land Management, Oregon State Office, (Area of administration: Oregon, Washington), PO Box 2965, Portland, Oregon 97208.

Deputy State Director, Administration, Bureau of Land Management, Utah State Office, PO Box 45155, Salt Lake City, Utah 84145–0155.

Deputy State Director, Administration, Bureau of Land Management, Wyoming State Office, (Area of administration: Wyoming, Nebraska), 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

Deputy State Director, Administration, Bureau of Land Management, National Interagency Fire Center, 3833 S. Development Avenue, Boise, Idaho 83705–5354.

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager identified in the listing in the ''System Manager and Address'' section above. A written, signed request stating that the requester seeks information concerning records pertaining to him/her is required. The request envelope and letter should be clearly marked ''PRIVACY ACT

INQUIRY.'' (See 43 CFR 2.60 for procedures on making inquiries).

RECORD ACCESS PROCEDURES:

For copies of your records write to the pertinent System Managers at the locations above. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the content requirements of 43 CFR 2.63. If copies are sought, indicate the maximum you are willing to pay (43 CFR 2.63(b)(4)).

CONTESTING RECORDS PROCEDURES:

Use the same procedures as the ''Records Access Procedures'' section above.

RECORD SOURCE CATEGORIES:

Customers, accounting records, standard finance office documents, and various paper and electronic systems where charges and payment are recorded.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–140 Filed 1–4–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–00–1420–BJ]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

New Mexico Principal Meridian, New Mexico

T. 29 N., R. 10 W., approved December 9, 1999, for Group 954 NM.
T. 29 N., R. 11 W., approved December 9, 1999, for Group 954 NM.
T. 30 N., R. 8 W., approved December 9, 1999, for Group 954 NM.
T. 32 N., R. 10 W., approved December 9, 1999, for Group 966 NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: December 21, 1999.

James D. Claflin,

Acting Chief Cadastral Surveyor for New Mexico.

[FR Doc. 00–196 Filed 1–4–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Derby Dam Fish Passage, Newlands Project, Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental document (environmental assessment or environmental impact statement) and notice of public meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Reclamation (Reclamation), proposes to prepare an environmental document for the purpose of evaluating options to provide fish passage at Derby Dam, a facility of the Newlands Project located on the Truckee River approximately 20 miles east of Reno, Nevada. The environmental document will evaluate the effects of the construction and implementation of fish passage at Derby Dam.

At present it is not clear whether the scope of the action and anticipated project impacts will require preparation of an environmental impact statement (EIS) instead of an environmental assessment (EA). However, to ensure the timely and appropriate level of NEPA compliance and to limit potential future delays to the project schedule, Reclamation is proceeding as if the project impacts would require preparation of an EA. Reclamation will reevaluate the need for an EIS after obtaining written and oral comments on the project scope, alternatives and environmental impacts and after Reclamation's evaluation of potential impacts of the proposed project. Reclamation will publish a notice of change if a decision is made to prepare an EIS rather than an EA. However, the scoping process to be conducted will suffice for either course of action.

There are no known Indian Trust Asset or environmental justice issues associated with the proposed action. The project is designed to benefit fishes of both Pyramid Lake and the lower Truckee River and is anticipated to have a beneficial impact for this Indian Trust Asset.

DATES: Four scoping meetings will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting dates are:

Monday, February 7, 2000, at 4 p.m., in Fernley, NV
Monday, February 7, 2000, at 7 p.m., in Fallon, NV
Tuesday, February 8, 2000, at 7 p.m., in Nixon, NV
Wednesday, February 9, 2000, at 7 p.m., in Reno, NV

ADDRESSES: The meeting locations are as follows:

Fernley: Fernley Town Complex, 595 Silver Lace Blvd., Suite 117, Fernley, NV 89408; telephone: (775) 575–5455
Fallon: Fallon Convention Center, 100 Campus Way, Fallon, NV 89406; telephone: (775) 423–4556
Nixon: Pyramid Lake Paiute Tribe Council Chambers, 208 Capital Hill (Highway 447) Nixon, NV 89424; telephone: (775) 574–1000
Reno: Bartley Ranch Park Interpretive Center, 6000 Bartley Ranch Road, Reno, NV 89511; telephone: (775) 828–6612

Written comments on the scope of the environmental documents should be submitted by February 29, 2000, to Caryn Huntt, Environmental Specialist, Bureau of Reclamation, Lahontan Basin Area Office, Attention: LO–450, P.O. Box 640, Carson City, NV 89702.

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 public 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: Caryn Huntt or Steve Alcorn, Deputy Area Manager, telephone and TDD: (775) 882–3436, Lahontan Basin Area Office, Attention: LO–450 or LO–101, P.O. Box 640, Carson City, NV 89702.

SUPPLEMENTARY INFORMATION: Derby Dam was constructed in 1903 through 1905 and is located on the Truckee River approximately 20 miles east of Reno, Nevada. The dam is an integral part of the Newlands Project and diverts Truckee River water into the Truckee Canal. Water from the Truckee Canal is used for irrigation of the Truckee Division lands along the canal and for supplemental storage at Lahontan Reservoir on the Carson River. Water stored at Lahontan Reservoir is used to irrigate land in the Carson Division of the Newlands Project.

Historically, the endangered cui-ui and threatened Lahontan cutthroat trout (LCT) species inhabited Pyramid Lake and migrated upstream in the Truckee River to spawn. Water diversions, commercial fishing, construction of dams, and other changes in the watershed impacted the ability of both species to spawn in the river. Currently three structures impede fish movements between Pyramid Lake and the lower Truckee River. Fish must negotiate Marble Bluff Dam, immediately upstream of the lake; Numana Dam, 8.3 miles upstream from the lake; and Derby Dam about 34 miles upstream from Pyramid Lake. Marble Bluff Dam and Numana Dam have fish passage facilities. A fish ladder was installed at Derby Dam in 1908, but the ladder is no longer present. Providing fish passage at Derby Dam will allow access for fish species, including LCT and possibly cui-ui, to habitat upstream of Derby Dam.

The purpose of the Derby Dam Fish Passage Project is to provide fish species with access to habitat upstream and downstream of Derby Dam, consistent with existing Derby Dam operations, Pyramid Lake and Newlands Project water rights, and flood control operations at Derby Dam. This project would not alter the operations of Derby Dam during flood or non-flood conditions, or change the 1997 adjusted Newlands Project Operating Criteria and Procedures. The project would enhance the Federal Government's ability to meet Federal trust responsibilities in the Truckee River basin.

Special Services

Persons requiring any special services should contact Caryn Huntt at (775) 882–3436. Please notify Ms. Huntt as far in advance of the particular meeting as possible, but no later than 3 working days prior to the meeting to enable Reclamation to secure the services. If a request cannot be honored, the requester will be notified.

Dated: December 29, 1999.

Lester A. Snow,

Regional Director.

[FR Doc. 00–132 Filed 1–4–00; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Bell Atlantic Corporation et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment and Competitive Impact Statement has been filed with the United States District Court for the District of Columbia in *United States of America* v. *Bell Atlantic Corporation et al.,* Civil Action 99–1119 (LFO). On December 9, 1999, the United States filed a Supplemental Complaint alleging that the proposed merger of GTE Corporation and Bell Atlantic Corporation and the proposed partnership between Vodafone AirTouch Plc and Bell Atlantic Corporation would lessen competition in the markets for wireless mobile telephone services in 13 major trading areas, and 96 metropolitan statistical areas and rural service areas in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Supplemental Complaint, requires defendants to divest one of their two wireless telephone businesses in each market where these businesses overlap geographically. The proposed Final Judgment supersedes the proposed decree filed in May 1999 which predated Bell Atlantic Corporation's September 1999 partnership agreement with Vodafone AirTouch Plc and therefore related solely to the merger of Bell Atlantic Corporation and GTE Corporation. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 200, 325 Seventh Street, NW, and at the Office of the Clerk of the United States District Court for the District of Columbia. These materials are also located on the Antitrust Division's web site (www.usdoj.gov/atr/cases.html).

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, Department of Justice, 1401 H Street, NW, Room 8000, Washington, DC 20530 (telephone: (202) 514–5621).

Constance K. Robinson,

Director of Operations.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: December 6, 1999.

For Plaintiff United States of America:

Joel I. Klein,

Assistant Attorney General.

A. Douglas Melamed,

Principal Deputy Assistant Attorney General.

Constance K. Robinson,

Director of Operations and Merger Enforcement.

Donald J. Russell,

Chief, Telecommunications Task Force.

Laury Bobbish,

Assistant Chief, Telecommunications Task Force.

Hillary B. Burchuk, D.C. Bar No. 366755;

Lawrence M. Frankel; D.C. Bar No. 441532.

Susan Wittenberg; D.C. Bar No. 453692;

Attorneys, Telecommunications Task Force.

U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5621.

Date Signed: December 6, 1999.

For Bell Atlantic Corporation:

John Thorne,

D.C. Bar No. 421351, Bell Atlantic Corporation, 1320 North Courthouse Road, Eighth Floor, Arlington, Virginia 22201, (703) 974–1600.

Date Signed: December 6, 1999.

For GTE Corporation:

Steven G. Bradbury,

D.C. Bar No. 416430, Kirkland & Ellis, 655 15th Street, N.W., Washington, DC 20005, (202) 879–5000.

Date Signed: December 6, 1999.

For Vodafone Airtouch PLC

Megan Pierson,

AirTouch Communications, Inc., One California Street, San Francisco, CA 94111, (415) 658–2157.

Date Signed: December 3, 1999.

Stipulation Approved for Filing.

Done this day of December, 1999.

United States District Judge

Final Judgment

Whereas, plaintiff, United States of America, filed its Motion for Leave to File Supplemental Complaint on December 6, 1999.

And whereas, plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication on any issue of fact or law;

And whereas, entry of this Final Judgment does not constitute any evidence against or an admission by any party with respect to any issue of law or fact;

And whereas, defendants have further consented to be bound by the provisions of the Final Judgment pending its approval by the Court;

And whereas, plaintiff the United States believes that entry of this Final Judgment is necessary to protect competition in markets for mobile wireless telecommunications services in Alabama, Arizona, California, Florida, Idaho, Illinois, Indiana, Montana, New Mexico, Ohio, South Carolina, Texas, Virginia, Washington and Wisconsin.

And whereas, the essence of this Final Judgment is prompt and certain divestiture of certain wireless businesses that would otherwise be commonly owned and in many cases controlled, including their licenses and all relevant assets of the wireless businesses, and the imposition of related injunctive relief to ensure that competition is not substantially lessened;

And whereas, plaintiff the United States requires that defendants make certain divestitures of such licenses and assets for the purpose of ensuring that competition is not substantially lessened in any relevant market for mobile wireless telecommunications services in Alabama, Arizona, California, Florida, Idaho, Illinois, Indiana, Montana, New Mexico, Ohio, South Carolina, Texas, Virginia, Washington and Wisconsin.

And whereas, defendants have represented to plaintiff that the divestitures ordered herein can and will be made and that defendants will not raise any claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained herein below;

Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged* and *decreed:*

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Supplemental Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II. Definitions

A. ''Bell Atlantic'' means Bell Atlantic Corporation, a corporation with its headquarters in New York City, New York and includes its successors and assigns, its subsidiaries and affiliates, and the directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

B. ''Bell Atlantic/GTE Merger'' means the merger of Bell Atlantic and GTE, as detailed in the Agreement and Plan of Merger entered into Bell Atlantic and GTE on July 28, 1998.

C. ''Bell Atlantic/Vodafone Partnership'' means the partnership between Bell Atlantic and Vodafone as detailed in the U.S. Wireless Alliance Agreement among Bell Atlantic Corporation and Vodafone AirTouch Plc dated September 21, 1999.

D. ''GTE'' means GTE Corporation, a corporation with its headquarters in Irving, Texas and includes its successors and assigns, its subsidiaries and affiliates, and the directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

E. ''Overlapping Wireless Markets'' means the following Metropolitan Statistical Areas (''MSA''), Major Trading Areas (''MTA''), and Rural Service Areas (''RSA'') used to define cellular and PCS license areas by the Federal Communications Commission (''FCC''), in which, as of the date of the filing of the Motion for Leave to File Supplemental Complaint in this case, Bell Atlantic and GTE held an interest in cellular and PCS businesses, and Vodafone held, or has plans to acquire,[1] an ownership interest in cellular and PCS businesses which serve the following MTAs, MSAs and RSAs that geographically overlap with the cellular and/or PCS business of another defendant, as indicated:

I. Cellular/Cellular Overlap Areas

A. Bell Atlantic Cellular/Vodafone Cellular Overlap Areas

1. Arizona

[1] Pursuant to a July 18, 1999 purchase agreement, Vodafone plans to acquire interests in cellular businesses from CommNet Cellular Inc. (''CommNet'') that overlap with GTE's PCS business in the following RSAs: Idaho 2-Idaho RSA; Montana 1-Lincoln RSA.

a. Phoenix MSA
b. Tucson MSA
c. Arizona 2-Coconino RSA
2. New Mexico
a. Albuquerque MSA
B. Bell Atlantic Cellular/GTE Cellular Overlap Areas
1. Mew Mexico
a. Las Cruces MSA
2. South Carolina
a. Greenville MSA
b. Anderson MSA
3. Texas
a. El Paso MSA
C. GTE Cellular/Vodafone Cellular Overlap Areas
1. California
a. Salinas-Monterey-Seaside MSA
b. San Diego MSA
c. San Francisco MSA
d. San Jose MSA
e. Santa Rosa-Petaluma MSA
f. Vallejo-Napa-Fairfield MSA
2. Ohio
a. Akron MSA
b. Canton MSA
c. Cleveland MSA
d. Lorain-Elyria MSA
e. Ohio 3-Ashtabula RSA

II. PCS/Cellular Overlap Areas

A. PrimeCo PCS/GTE Cellular Overlap Areas [2]
1. Jacksonville MSA
a. Jacksonville MSA
b. Florida 5-Putnam RSA
2. Miami-Fort Lauderdale MTA
a. Fort Myers MSA
b. Florida 1-Collier (B1) RSA
c. Florida 2-Glades (B1) RSA
d. Florida 3-Hardee RSA
e. Florida 11-Monroe (B2) RSA
3. Tampa-St. Petersburg-Orlando MTA
a. Tampa-St. Petersburg MSA
b. Lakeland-Winter Haven MSA
c. Sarasota MSA
d. Bradenton MSA
e. Florida 2-Glades (B1) RSA
f. Florida 3-Hardee RSA
g. Florida 4-Citrus (B1) RSA
4. New Orleans-Baton Rouge MTA
a. Mobile, AL MSA
b. Pensacola, FL MSA
5. Chicago MTA
a. Auroa-Elgin, IL MSA
b. Bloomington-Normal, IL MSA
c. Champaign-Urbana-Rantoul, IL MSA
d. Chicago, IL MSA
e. Decatur, IL MSA
f. Fort Wayne, IN MSA
g. Gary-Hammond-East Chicago, IN MSA
h. Joliet, IL MSA
i. Kankakee, IL MSA
J. Rockford, IL MSA
k. Springfield, IL MSA
l. Illinois 1-Jo Daviess RSA
m. Illinois 2-Bureau (B1) RSA
n. Illinois 2-Bureau (B3) RSA
o. Illinois 4-Adams (B1) RSA
p. Illinois 5-Mason (B2) RSA
q. Illinois 6-Montgomery RSA
r. Illinois 7-Vermilion RSA
s. Indiana 1-Newton (B1) RSA
t. Indiana 1-Newton (B2) RSA
u. Indiana 3-Huntington RSA
6. Dallas-Fort Worth MTA
a. Dallas-Fort Worth MSA
b. Austin MSA
c. Sherman-Denison MSA
d. Texas 10-Navarro (B3) RSA
e. Texas 11-Cherokee (B1) RSA
f. Texas 16-Burleson RSA
7. Houston MTA
a. Houston MSA
b. Beaumont-Port Arthur MSA
c. Galveston MSA
d. Bryan-College Station MSA
e. Victoria MSA
f. Texas 10-Navarro (B3) RSA
g. Texas 11-Cherokee (B1) RSA
h. Texas 16-Burleson RSA
i. Texas 17-Newton RSA
j. Texas 20-Wilson (B2) RSA
k. Texas 21-Chambers RSA
8. San Antonio MTA
a. San Antonio MSA
b. Texas 16-Burleson RSA
c. Texas 20-Wilson (B2) RSA
9. Richmond-Norfolk MTA
a. Norfolk-Virginia Beach-Portsmouth MSA
b. Richmond MSA
c. Newport News—Hampton MSA
d. Petersburg—Colonial Heights MSA
e. Virginia 7—Buckingham (B1) RSA
f. Virginia 8—Amelia RSA
g. Virginia 9—Greensville RSA
h. Virginia 11—Madison (B1) RSA
i. Virginia 12—Caroline (B1) RSA
j. Virginia 12—Caroline (B2) RSA
10. Milwaukee MTA
a. Wisconsin 8—Vernon RSA
B. GTE PCS/Vodafone Cellular Overlap Areas
1. Cincinnati—Dayton MTA
a. Cincinnati MSA
b. Dayton MSA
c. Hamilton/Middleton MSA
d. Springfield MSA
e. Ohio 4—Mercer RSA
f. Ohio 8—Clinton RSA
2. Seattle MTA
a. Bellingham MSA
b. Bremerton MSA
c. Olympia MSA
d. Seattle—Everett MSA
e. Tacoma MSA
f. Washington 1—Clallam RSA
g. Washington 2—Okanagan RSA
h. Washington 4—Gray's Harbor RSA
3. Spokane—Billings MTA
a. Spokane MSA
b. Idaho 1—Boundary RSA
c. Idaho 2—Idaho RSA
d. Montana 1—Lincoln RSA
e. Washington 3—Ferry RSA

F. ''Vodafone'' means Vodafone AirTouch Plc, an English public limited company with its headquarters in Newbury, Berkshire, England, and includes its successors and assigns, its subsidiaries and affiliates, and the directors, officers, managers, agents and employees acting for or on behalf of any of the foregoing entities.

G. ''Wireless System Assets'' means, for each wireless business to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the wireless businesses to be divested (including the provision of long distance telecommunications services for wireless calls). ''Wireless System Assets'' shall be construed broadly to accomplish the complete divestitures of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets required by this Final Judgment and to ensure that the divested wireless businesses remain viable, ongoing businesses. With respect to each overlap in the Overlapping Wireless Markets created by the consummation of a transaction between any of the defendants, the Wireless System Assets to be divested shall be either those in which one party to the transaction has an interest or those in which the other party to the transaction has or will acquire an interest, but not both. These divestitures of the Wireless System Assets in the Overlapping Wireless Markets as defined in Section II.E shall be accomplished by: (1) transferring to the purchaser the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of either defendant's overall wireless business that must be retained to continue the existing operations of the wireless properties defendants are not required to divest, and that either are not capable of being divided between the divested wireless businesses and those that are not divested or are assets that the divesting defendant and the purchaser(s) agree shall not be divided); and (ii) granting to the purchaser(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period at the election of the purchaser to use any of the divesting defendant's assets used in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment, where those assets are not subject to complete transfer to the purchaser under (i). Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, customer support and billing systems, interfaces with other service providers, business and customer records and information,

[2] Bell Atlantic and Vodafone, as of the date of the filing of the Motion for Leave to File Supplemental Complaint, are partners in PCS Prime-Co, L.P. (''PrimeCo''). PrimeCo currently operates PCS businesses in ten MTAs, which geographically overlap with GET's cellular businesses.

customer lists, credit records, accounts, and historic and current business plans, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks (except for trademarks, trade names and service marks containing ''1–800–BUY–TIME,'' ''Airbridge,'' ''AirTouch,'' ''AmericaChoice,'' ''Bell Atlantic Mobile,'' ''Cellular One,'' ''Conversation Card,'' ''DitigalChoice,'' ''EasternChoice,'' ''GTE,'' ''HomeChoice,'' ''International Traveler,'' ''Megaphone,'' ''MetroMobile,'' ''Mobilnet,'' ''No Regrets,'' ''Now You Can,'' ''PCS Now,'' ''PCS Home,'' ''PCS Ultra,'' ''Portal Phone,'' ''PrimeCo,'' ''Vodafone,'' ''Welcome to the United States of America,'' and ''WesternChoice'') or other intellectual property, including all intellectual property rights under third party licenses that are capable of being transferred to a purchaser either in their entirety, for assets described above under (i), or through a license obtained through or from the divesting defendant, for assets described above under (ii). Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Supplemental Complaint in this case and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third party licenses that are used by the wireless businesses being divested but that defendants could not transfer to a purchaser entirely or by license without third party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

1. In the event that defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHz of broadband PCS spectrum within that PCS/Cellular Overlap Area upon completion of the divestiture of the Wireless System Assets.

2. In the event that defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants, at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap, may request approval from plaintiff to partition the PCS license along Basic Trading Area (''BTA'') geographic boundaries, or in the case of Kenosha County, Wisconsin, county boundaries, and to retain assets in one or more specified non-overlapping BTAs or in Kenosha County, Wisconsin. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be retained in the non-overlapping BTAs or Kenosha County, Wisconsin, are not needed to ensure the competitive effectiveness of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity.

3. In a PCS/Cellular Overlap Area where a defendant holds a non-controlling minority interest in an overlapping cellular business, defendants, at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap, may request approval from plaintiff to retain both the PCS business and the non-controlling minority interest in such overlapping cellular business. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition.

III. Applicability and Effect

A. The provisions of this Final Judgment shall be applicable to Bell Atlantic, GTE, and Vodafone, as defined above, the attorneys of each of the above, and shall also be applicable to all other persons in active concert or participation with any of the above who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition to an Interim Party, which shall be defined to mean any person other than a purchaser approved by plaintiff pursuant to Section IV.C, of all or substantially all of their assets, or of a lesser business unit containing the Wireless System Assets required to be divested by this Final Judgment, that the Interim Party agrees to be bound by the provisions of this Final Judgment, and shall also require that any purchaser of the Wireless System Assets agree to be bound by Section X of this Final Judgment.

IV. Divestiture of Wireless Interests

A. Defendants Bell Atlantic, Vodafone and GTE shall divest themselves of the Wireless System Assets of one of the two wireless businesses in each of the Overlapping Wireless Markets, including both any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control, to a purchaser or purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of this Final Judgment in accordance with the following schedule:

1. The divestiture of the Wireless System Assets for each Cellular/Cellular Overlap Area shall occur prior to or at the same time as consummation of the transaction that gives rise to the overlap.

2. The divestitures of the Wireless System Assets for each PCS/Cellular Overlap Area shall occur prior to or at the same time as consummation of the transaction that gives rise to the overlap, or June 30, 2000, whichever is later. Plaintiff may, in its sole discretion, extend this date by up to two thirty-day periods. If one or more divestitures have not been completed as of the date of the consummation of the transaction that gives rise to the overlap, defendants will submit to plaintiff a definitive Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested.

B. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. The divestitures carried out under the terms of this decree shall also be conducted in compliance with the applicable rules of the FCC, including 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership), or any waiver of such rules or other authorization granted by the FCC. Authorization by the FCC to conduct divestiture of a cellular business in a particular manner will not modify any of the requirements of this decree.

C. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of the Final Judgment, shall be accomplished by (1) divesting all of the Wireless System Assets in any individual Overlapping Wireless Market entirely to a single purchaser (but Wireless System Assets used by any defendant in the operation of its cellular business in different Overlapping Wireless Markets may be divested to different purchasers), and (2) selling or otherwise conveying the Wireless System Assets to the purchaser(s) in such a way as to satisfy plaintiff, in its sole discretion, that each wireless business can and will be used by the purchaser(s) as part of a viable,

ongoing business engaged in the provision of wireless mobile telephone service. The divestitures pursuant to this Final Judgment shall be made to one or more purchasers for whom it is demonstrated to plaintiff's sole satisfaction that (1) the purchaser has the capability and intent of competing effectively in the provision of wireless mobile telephone service using the Wireless System Assets, (2) the purchaser has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets, and (3) none of the terms of any agreement between the purchaser and any of the defendants shall give defendants the ability unreasonably (i) to raise the purchaser's costs, (ii) to lower the purchaser's efficiency, (iii) to limit any line of business which a purchaser may choose to pursue using the Wireless System Assets (including, but not limited to, entry into local telecommunications services on a resale or facilities basis or long distance telecommunications services on a resale or facilities basis), or otherwise to interfere with the ability of the purchaser to compete effectively.

D. If they have not already done so, defendants shall make known the availability of the Wireless System Assets in each of the Overlapping Wireless Markets by usual and customary means, sufficiently in advance of the time of consummation of any transaction which gives rise to an overlap in an Overlapping Wireless Market, reasonably to enable the required divestitures to be accomplished according to the schedule outlined herein. Defendants shall inform any person making an inquiry regarding a possible purchase of the Wireless System Assets that the sale is being made pursuant to the requirements of this Final Judgment, as well as the rules of the FCC, and shall provide such person with a copy of the Final Judgment.

E. Defendants shall offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, access to personnel, the ability to inspect the Wireless System Assets, and all information and any financial, operational, or other documents customarily provided as part of a due diligence process, including all information relevant to the sale and to the areas of business in which the cellular business has been engaged or has considered entering, except documents subject to attorney-client or work product privileges, or third party intellectual property that defendants are precluded by contract from disclosing and that has been identified in a schedule pursuant to Section II.G. Defendants shall make such information available to the plaintiff at the same time that such information is made available to any other person.

F. Defendants shall not interfere with any negotiations by any purchaser to retain any employees, for Bell Atlantic and GTE who work or have worked since July 29, 1998, and for Vodafone who work or have worked since September 21, 1999 (other than solely on a temporary assignment basis from another part of Bell Atlantic, Vodafone or GTE) with, or whose principal responsibility relates to, the divested Wireless System Assets.

G. To the extent that the wireless businesses to be divested use intellectual property, as required to be identified by Section II.G, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall cooperate with the purchaser(s) and trustee to seek to obtain those consents.

H. Defendants shall preserve all records of all efforts made to preserve and divest any or all of the Wireless System Assets required to be divested until the termination of this Final Judgment.

V. Appointment of Trustee

A. If defendants have not divested all of the Wireless System Assets required to be divested in accordance with Section IV to a purchaser or purchasers that have been approved by plaintiff pursuant to Section IV.C, then:

1. Defendants that are party to a transaction that gives rise to an overlap shall identify to plaintiff in writing the remaining Wireless System Assets to be divested in the Overlapping Wireless Markets, and this written notification shall also be provided to the trustee promptly upon his or her appointment by the Court;

2. The Court shall, on application of plaintiff, appoint a trustee selected by plaintiff, who will be responsible for (a) accomplishing a divestiture of all Wireless System Assets transferred to the trustee from defendants, in accordance with the terms of this Final Judgment, to a purchaser or purchasers approved by plaintiff under Section IV.C, and (b) exercising the responsibilities of the licensee and controlling and operating the transferred Wireless System Assets, to ensure that the wireless businesses remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the Overlapping Wireless Markets, until they are divested to a purchaser or purchasers, and the trustee shall agree to be bound by this Final Judgment.

3. Defendants shall submit a form of trust agreement (''Trust Agreement'') to plaintiff, which must be consistent with the terms of this Final Judgment and which must have received approval by plaintiff, who shall communicate to defendants within ten (10) business days approval or disapproval of that form; and

4. After obtaining any necessary approvals from the FCC for the transfer of control of the licenses of the remaining Wireless System Assets to the trustee, defendants shall irrevocably divest the remaining Wireless System Assets to the trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to purchaser(s)) and control such assets, subject to the terms of the approved Trust Agreement.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the wireless business(es) to be divested, which shall be done within the time periods set forth in this Final Judgment. Those assets shall be the Wireless System Assets as designated by defendants as set forth in Section V.A.1 for the Overlapping Wireless Markets. In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment. Subject to Section V.C of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture and in the management of the Wireless System Assets transferred to the trustee, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiff in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds

other than the trustee's malfeasance. Any such objections by the defendants must be conveyed in writing to plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the wireless business(es) sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested wireless business(es) and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the wireless business(es) to be divested, and defendants shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. As required and limited by Sections IV.E and F of this Final Judgment, defendants shall permit prospective purchaser(s) of the Wireless System Assets to have reasonable access to personnel and to make such inspection of the Wireless System Assets to be sold and any and all financial, operational, or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After being appointed and until the divestiture of the Wireless System Assets is complete, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring the Wireless System Assets to be sold, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Wireless System Assets.

F. The Trustee shall divest the Wireless System Assets in each of the Overlapping Wireless Markets to a purchaser or purchasers acceptable to plaintiff in its sole discretion, as required in Section IV.C of this Final Judgment, no later than one hundred and eighty (180) calendar days after the Wireless System Assets are transferred to a trustee in accordance with the schedule outlined in Section IV, provided however, that if applications have been filed with the FCC within the one hundred eighty day period seeking approval to assign or transfer licenses to the purchaser(s) of the Wireless System Assets but approval of such applications has not been granted before the end of the one hundred eighty day period, the period shall be extended with respect to the divestiture of those Wireless System Assets for which final FCC approval has not been granted until five (5) days after such approval is received.

G. If the trustee has not accomplished the divestiture of all of the Wireless System Assets within the time specified for completion of divestiture to a purchaser or purchasers under Section V.F of this Final Judgment, the trustee thereupon shall file promptly with this Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations; provided, however, that, to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it deems appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period agreed to by plaintiff.

H. After defendants transfer the Wireless System Assets to the trustee, and until those Wireless System Assets have been divested to a purchaser or purchasers approved by plaintiff pursuant to Section IV.C, the trustee shall have sole and complete authority to manage and operate the Wireless System Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Wireless System Assets transferred to the trustee, apart from the right to receive the proceeds of the sale or other disposition of the Wireless System Assets. The trustee shall operate the wireless business(es) as a separate and independent business entity from each of the defendants, with sole control over operations, marketing and sales. Defendants shall not communicate with, or attempt to influence the business decisions of, the trustee concerning the operation and management of the wireless businesses, and shall not communicate with the trustee concerning the divestiture of the Wireless System Assets or take any action to influence, interfere with, or impede the trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the trustee, if requested to do so, with whatever resources or cooperation may be required to complete the divestitures of the Wireless System Assets and to carry out the requirements of this Final Judgment. In no event shall defendants provide to, or receive from, the trustee or the wireless businesses under the trustee's control any non-public or competitively sensitive marketing, sales, or pricing information relating to their respective mobile wireless telecommunications service businesses.

VI. Notification

A. Within two (2) business days following execution of a binding agreement to effect, in whole or in part, any proposed divestiture required by this Final Judgment, whichever defendant is divesting the Wireless System Assets, or the trustee if the trustee is divesting the Wireless System Assets, shall notify plaintiff of the proposed divestiture. If the trustee is responsible for the divestiture, the trustee shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified

who theretofore offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Wireless System Assets that are the subject of the binding agreement, together will full details of same.

B. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed purchaser(s), any other third party, or the trustee (if applicable), additional information concerning the proposed divestiture and the proposed purchaser(s) or any other potential purchaser(s). Defendants and the trustee shall furnish any such additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed purchaser(s), any third party, or the trustee, whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not plaintiff objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee, if there is one, that it does not object, then the divestiture may be consummated subject only to defendants' limited right to object to the sale under Section V.B of this Final Judgment. Absent written notice that plaintiff does not object to the proposed purchaser(s) or in the event of an objection by plaintiff, a divestiture shall not be consummated. Upon objection by a defendant under the proviso of Section V.B, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Motion for Leave to File Supplemental Complaint in this matter and every thirty (30) calendar days thereafter until all divestitures have been completed, defendants shall deliver to plaintiff an affidavit as to the fact and manner of defendants' compliance with this Final Judgment. Each such affidavit shall (i) include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any or all of the Wireless System Assets required to be divested, (ii) describe in detail each contact with any such person during that period, and (iii) include a summary of the efforts that defendants have made to solicit a purchaser(s) for the Wireless System Assets to be divested in the Overlapping Wireless Markets pursuant to this Final Judgment and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Motion for Leave to File Supplemental Complaint in this matter, defendants shall deliver to plaintiff an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to preserve the Wireless System Assets to be divested pursuant to this Final Judgment. Defendants shall deliver to plaintiff another affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to Section VII.B of this Final Judgment within fifteen (15) calendar days after the charge is implemented.

VIII. Financing

Defendants shall not finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

IX. Hold Separate Order

A. Until accomplishment of the divestitures of the Wireless System Assets to purchaser(s) approved by plaintiff pursuant to Section IV.C, each defendant shall take all steps necessary to ensure that each of the wireless businesses that it owns or operates in the Overlapping Wireless Markets shall continue to be operated as a separate, independent, ongoing, economically viable and active competitor to the other mobile wireless telecommunications providers operating in the same license area; and that except as necessary to comply with this Final Judgment, the operation of said wireless businesses (including the performance of decision-making functions relating to marketing and pricing) will be kept separate and apart from, and not influenced by, the operation of the other wireless business, and the books, records, and competitively sensitive sales, marketing, and pricing information associated with said wireless businesses will be kept separate and apart from the books, records, and competitively sensitive sales, marketing, and pricing information associated with the other wireless business; provided that defendants may continue to use any trademarks, trade names or service marks used in the operation of such wireless businesses prior to the consummation of the Bell Atlantic/GTE Merger and/or the creation of the Bell Atlantic/Vodafone Partnership.

B. Until the Wireless System Assets in each Overlapping Wireless Market have been divested to purchaser(s) approved by plaintiff, or transferred to a trustee pursuant to Section V of this Final Judgment, each defendant shall in accordance with past practices, with respect to each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets;

1. Use all reasonable efforts to maintain and increase sales of wireless mobile telephone services, and maintain and increase promotional, advertising, sales, technical assistance, and marketing support for the mobile telephone service sold by the wireless businesses;

2. Take all steps necessary to ensure that each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets is fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules;

3. Provide and maintain sufficient working capital and lines and sources of credit to maintain the Wireless System Assets as viable ongoing businesses;

4. Not remove, sell, lease, assign, transfer, pledge or otherwise dispose of or pledge as collateral for loans, any asset of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets, other than in the ordinary course of business, except as approved by plaintiff;

5. Maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books and records that report, on a periodic basis, such as the last business day of each month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit and loss of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets;

6. Be prohibited from terminating, transferring, or altering to the detriment of any employees who work with each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets as of the date of consummation of the Bell Atlantic/GTE Merger or the creation of the Bell Atlantic/Vodafone Partnership, any current employment or salary agreements, except: (a) In the ordinary course of business, (b) for transfer bids initiated by employees pursuant to defendants' regular, established job posting policies, (c) for an individual who has a written offer of employment

from a third party for a like position, or (d) as necessary to promote accomplishment of defendants' obligations under this Final Judgment; and

7. Take no action that would impede in any way or jeopardize the sale of each wireless business that it has an ownership interest in or operates in the Overlapping Wireless Markets.

C. On or before the consummation of the Bell Atlantic/GTE Merger or the creation of the Bell Atlantic/Vodafone Partnership, defendants shall assign complete managerial responsibility over each wireless business that they have an ownership interest in or operate in the Overlapping Wireless Markets to a specified manager who shall not participate, during the period of such responsibility, in the management of any of defendants' other businesses.

D. Defendants shall, during the period before all Wireless System Assets have been divested to a purchaser(s) or transferred to the trustee pursuant to Section V of this Final Judgment, each appoint a person or persons to oversee the Wireless System Assets owned by that defendant, who will be responsible for defendants' compliance with the requirements of Sections VII and IX of this Final Judgment. Such person(s) shall not be an officer, director, manager, employee, or agent of another defendant.

X. Compliance Inspection

For the purposes of determining or securing compliance of defendants with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant made to its principal office, shall be permitted without restraint or interference from defendants:

1. To have access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, and to take sworn testimony from the officers, directors, employees, or agents of defendants, who may have counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to defendants at their principal offices, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section X or Sections VI and VII shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by defendants), except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Further Provisions and Termination

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgment shall expire on the tenth anniversary of the date of its entry.

United States District Judge

Certificate of Service

I hereby certify that copies of the foregoing Motion for Leave to File Supplemental Complaint and Memorandum of Points and Authorities in Support thereof were served this 6th day of December, 1999 upon the following:

John Thorne (by hand),

Bell Atlantic Corporation, 1320 North Court House Road, Eighth Floor, Arlington, VA 22201, Counsel for Defendant Bell Atlantic Corporation.

Steven G. Bradbury (by hand),

Kirkland & Ellis, 655 Fifteenth Street, NW, Washington, DC 20005, Counsel for Defendant GTE Corporation.

Megan Pierson (by first class mail postage prepaid),

AirTouch Communications, Inc., One California Street, San Francisco, CA 94111, Counsel for Vodafone AirTouch Plc.

Lawrence M. Frankel,

Counsel for Plaintiff United States of America.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States filed a civil antitrust Supplemental Complaint on December 9, 1999 alleging that: (1) The proposed acquisition of GTE Corporation (''GTE'') by Bell Atlantic Corporation (''Bell Atlantic'') (2) the proposed partnership between Bell Atlantic and Vodafone AirTouch Plc (''Vodafone''); and (3) the combined effect of these two transactions would violate Section 7 of the Clayton Act, 15 U.S.C. 18 by lessening competition in the markets for wireless mobile telephone services in 13 major trading areas (''MTAs''), as well as 96 metropolitan statistical areas (''MSAs'') and rural service areas (''RSAs'') in Alabama, Arizona, California, Florida, Idaho, Illinois, Indiana, Montana, New Mexico, Ohio, South Carolina, Texas, Virginia, Washington, and Wisconsin.[1]

[1] The original Complaint in this proceeding was filed on May 7, 1999, challenging the July 28, 1998, merger agreement between Bell Atlantic and GTE (''Bell Atlantic/GTE Merger''). On September 21, 1999, Bell Atlantic and Vodafone entered into an agreement to create a partnership (''Bell Atlantic/Vodafone Partnership'') with the intent of combining the wireless businesses of Bell Atlantic, Vodafone, and GTE into a national wireless network. On December 6, 1999, the United States filed a motion requesting leave to file a Supplemental Complaint and to add Vodafone as a defendant to this action. That motion was granted

Shortly before the Supplemental Complaint was filed, the United States and defendants reached agreement on the terms of a revised proposed Final Judgment. The revised proposed Final Judgment [2] requires Bell Atlantic, Vodafone, or GTE to divest wireless assets in 96 markets. These overlapping markets include: (1) 58 MSAs and RSAs where GTE owns in whole or in part a cellular mobile telephone services business that overlaps part of one of the 10 MTAs where Bell Atlantic and Vodafone provide personal communications services through PCS PrimeCo, L.P. (''PrimeCo''), a business half owned by Bell Atlantic and half owned by Vodafone; (2) four MSAs where Bell Atlantic and GTE own in whole or in part competing cellular mobile wireless telephone businesses; (3) three MSAs and one RSA where Bell Atlantic and Vodafone own in whole or in part competing cellular mobile wireless telephone businesses; (4) ten MSAs and one RSA where Vodafone and GTE own in whole or part competing cellular mobile wireless telephone businesses; and (5) ten MSAs and nine RSAs where Vodafone owns, or will own, in whole or part, a cellular mobile wireless telephone business that competes with GTE wireless PCS telephone business that overlaps all or part of the area. These 96 overlap areas are collectively identified in the Supplemental Complaint as the ''Overlapping Wireless Markets.''

In each of the Overlapping Wireless Markets, defendants can choose which wireless business to divest. The proposed Final Judgment also contains provisions, explained below, designed to minimize any risk of competitive harm that otherwise might arise pending completion of the divestiture. The proposed Final Judgment and a Stipulation by plaintiff and defendants consenting to its entry were filed simultaneously with the Supplemental Complaint.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (''APPA''). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. The United States and defendants have also stipulated that defendants will comply with the terms of the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the Final Judgment by the Court. Should the Court decline to enter the Final Judgment, defendants have also committed to continue to abide by its requirements until the expiration of time for any appeals of such ruling.

III. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Bell Atlantic is one of the remaining five Regional Bell Operating Companies (''RBOCs'') created in 1984 by the consent decree settling the United States' antitrust case against American Telephone & Telegraph Co. GTE is the largest non-RBOC local telephone operating company in the United States. Vodafone is the world's largest mobile telecommunications company, and the third largest wireless mobile telephone service provider in the United States. Bell Atlantic and GTE each provide local exchange services in distinct regions, as well as wireless mobile telephone services, including cellular mobile telephone services and PCS, both within and outside of their local exchange service regions. Bell Atlantic is a 50/50 partner with Vodafone in PrimeCo, a firm that provides wireless mobile telephone services in many areas of the country.

Bell Atlantic, with headquarters in New York City, New York, is the second largest RBOC in the United States, with approximately 42 million total local telephone access lines. In 1998, Bell Atlantic had revenues in excess of $31 billion. Bell Atlantic provides local telephone services to retail customers in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, as well as cellular mobile telephone services in those states. Bell Atlantic also provides cellar mobile telephone services in some areas outside its local exchange service region, including areas within the states of Arizona, Georgia, North Carolina, New Mexico, South Carolina, and Texas. Through its partnership with Vodafone in PrimeCo, Bell Atlantic also provides wireless services in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, Ohio, Oklahoma, Texas, Virginia, and Wisconsin. Bell Atlantic is the nation's fourth largest wireless mobile telephone service provider, with about 7.5 million proportionate subscribers [3] nationwide.

GTE, with headquarters in Irving, Texas, is the a largest non-RBOC local telephone company in the United States, with over 23 million total local telephone access lines. In 1998, GTE had revenues in excess of $25 billion. GTE provides local telephone service to retail customers in Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, and it also provides wireless mobile telephone service in 17 states. GTE is the nation's fifth largest wireless mobile telephone service provider, with about 6.9 million proportionate subscribers nationwide.

Vodafone, with its headquarters in Newbury, Berkshire, England, has mobile operations in 23 countries in five continents, with more than 19 million proportionate customers outside of the United States. Within the United States, Vodafone serves 9.1 million cellular mobile telephone and PCS customers in 24 states and 22 of the top 30 U.S. markets. Vodafone entered into an agreement on July 19, 1999 to acquire certain cellular mobile telephone business from CommNet (''Vodafone/CommNet Merger'') for $1.36 billion, which would make Vodafone a provider of cellular mobile telephones services in an additional 11 midwestern and western states. The acquisition of CommNet's cellular business would add about 360,000 subscribers to Vodafone's total number of wireless subscribers nationwide.

On July 28, 1998, Bell Atlantic and GTE entered into a merger agreement whereby the two firms would merge in a transaction valued at approximately $53 billion at the time of the agreement. If this transaction is consummated, the combined total of Bell Atlantic's and GTE's wireless mobile telephone service

by the Court on December 9, 1999, and the Supplemental Complaint was accepted as filed on that date.

[2] The original proposed Final Judgment required either Bell Atlantic or GTE to divest its wireless telephone business in those markets where the two companies' business overlap. The revised Final Judgment essentially includes those areas, as well as the areas where Vodafone's wireless telephone businesses overlap with a competing businesses owned either by Bell Atlantic or GTE.

[3] ''Proportionate subscribers'' refers to the number of subscribers in a firm's wireless mobile telephone systems discounted by the firm's ownership interest in each system. For instance, a firm with a 100% ownership interest in a wireless business with 100,000 subscribers would have 100,000 proportionate subscribers, but a firm with a 25% interest in a system with 100,000 subscribers would be attributed 25,000 proportionate subscribers for that system.

subscribers, absent divestitures, would exceed 14 million.

On September 21, 1999, Bell Atlantic and Vodafone entered into an agreement to create a new wireless partnership that will combine the approximately $70 billion worth of wireless assets of Bell Atlantic, Vodafone, and GTE. The new wireless partnership will be the largest wireless business in the United States, serving over 23 million customers in 49 of the top 50 U.S. wireless markets and boasting a footprint covering 90% of the U.S. population.

B. Wireless Mobile Telephone Services

Wireless mobile telephone services permit users to make and receive telephone calls, using radio transmissions, while traveling by car or by other means. The mobility afforded by this service is a valuable feature to consumers, and cellular and other wireless mobile telephone services are commonly priced at a substantial premium above landline services. In order to provide this capability, wireless carriers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of local and long distance landline carriers, and with the networks of other wireless carriers. Current annual revenues from the sale of wireless mobile telephone services total approximately $37 billion in the United States.

Initially, wireless mobile telephone services were provided principally by two cellular systems in each MSA and RSA license area. Cellular licenses were awarded by the Federal Communications Commission (''FCC'') beginning in the early 1980s for each MSA and RSA.[4] A provider of Specialized Mobile Radio (''SMR'') services typically was also authorized to operate with some additional spectrum in these areas, including the Overlapping Wireless Markets.

In 1995, the FCC allocated (and subsequently issued licenses for) additional spectrum for the provision of PCS, a type of wireless telephone service that includes wireless mobile telephone services comparable to those offered by cellular carriers. In 1996, one SMR spectrum licensee began to use its SMR spectrum to offer wireless mobile telephone services, comparable to that offered by cellular and PCS providers and bundled with dispatch services, in a number of areas including some of the Overlapping Wireless Markets. While the areas for which PCS providers are licensed (MTAs and basic trading areas (''BTAs'')) differ somewhat from the cellular MSAs and RSAs, they generally overlap with them. In many areas, including most of the Overlapping Wireless Markets, not all of the PCS license holders have started to offer services or even begun to construct the facilities necessary to begin offering service. The PCS providers have tended to enter in the largest cities first, entering in smaller markets only later and not on as wide a scale. Moreover, even in those areas where one or more PCS providers have constructed their networks and have started to offer service, including the Overlapping Wireless Markets, the incumbent cellular providers, such as Bell Atlantic, Vodafone and GTE, still typically have substantially larger market shares than the new entrants.

C. Anticompetitive Consequences of the Proposed Acquisition

Bell Atlantic, Vodafone and GTE, or firms in which they have an interest, are or will be competing providers of wireless mobile telephone services in 96 cellular license areas in 15 states. These areas are referred to in the Supplemental Complaint as follows:

I. Cellular/Cellular Overlap Areas

A. Bell Atlantic Cellular/Vodafone Cellular Overlap Areas
1. Arizona
a. Phoenix MSA
b. Tucson MSA
c. Arizona 2—Coconino RSA
2. New Mexico
a. Albuquerque MSA

B. Bell Atlantic Cellular/GTE Cellular Overlap Areas
1. New Mexico
a. Las Cruces MSA
2. South Carolina
a. Greenville MSA
b. Anderson MSA
3. Texas
a. El Paso MSA

C. GTE Cellular/Vodafone Cellular Overlap Areas
1. California
a. Salinas-Monterey-seaside MSA
b. San Diego MSA
c. San Francisco MSA
d. San Jose MSA
e. Santa Rosa-Petaluma MSA
f. Vallejo-Napa-Fairfield MSA
2. Ohio
a. Akron MSA
b. Canton MSA
c. Cleveland MSA
d. Lorain-Elyria MSA
e. Ohio 3—Ashtabula RSA

II. PCS/Cellular Overlap Areas

A. PrimeCo PCS/GTE Cellular Overlap Areas
1. Jacksonville MTA
a. Jacksonville MSA
b. Florida 5—Putnam RSA
2. Miami-Fort Lauderdale MTA
a. Fort Myers MSA
b. Florida 1—Collier (B1) RSA
c. Florida 2—Glades (B1) RSA
d. Florida 3—Hardee RSA
e. Florida 11—Monroe (B2) RSA
3. Tampa-St. Petersburg-Orlando MTA
a. Tampa-St. Petersburg MSA
b. Lakeland-Winter Haven MSA
c. Sarasota MSA
d. Brandenton MSA
e. Florida 2—Glades (B1) RSA
f. Florida 3—Hardee RSA
g. Florida 4—Citrus (B1) RSA
4. New Orleans-Baton Rouge MTA
a. Mobile, AL MSA
b. Pensacola, FL MSA
5. Chicago MTA
a. Aurora-Elgin, IL MSA
b. Bloomington-Normal, IL MSA
c. Champaign-Urbana-Rantoul, IL MSA
d. Chicago, IL MSA
e. Decatur, IL MSA
f. Fort Wayne, IN MSA
g. Gary-Hammond-East Chicago, IN MSA
h. Joliet, IL MSA
i. Kankakee, IL MSA
j. Rockford, IL MSA
k. Springfield, IL MSA
l. Illinois 1—Jo Daviess RSA
m. Illinois 2—Bureau (B1) RSA
n. Illinois 2—Bureau (B3) RSA
o. Illinois 4—Adams (B1) RSA
p. Illinois 5—Mason (B2) RSA
q. Illinois 6—Montgomery RSA
r. Illinois 7—Vermilion RSA
s. Indiana 1—Newton (B1) RSA
t. Indiana 1—Newton (B2) RSA
u. Indiana 3—Huntington RSA
6. Dallas-Fort Worth MTA
a. Dallas-Fort Worth MSA
b. Austin MSA
c. Sherman-Denison MSA
d. Texas 10—Navarro (B3) RSA
e. Texas 11—Cherokee (B1) RSA
f. Texas 16—Burleson RSA
7. Houston MTA
a. Houston MSA
b. Beaumont-Port Arthur MSA
c. Galveston MSA
d. Bryan-College Station MSA
e. Victoria MSA
f. Texas 10—Navarro (B3) RSA
g. Texas 11—Cherokee (B1) RSA
h. Texas 16—Burleson RSA
i. Texas 17—Newton RSA
j. Texas 20—Wilson (B2) RSA
k. Texas 21—Chambers RSA
8. San Antonio MTA
a. San Antonio MSA
b. Texas 16—Burleson RSA
c. Texas 20—Wilson (B2) RSA
9. Richmond-Norfolk MTA
a. Norfolk-Virginia Beach-Portsmouth MSA
b. Richmond MSA
c. Newport News-Hampton MSA
d. Petersburg-Colonial Heights MSA
e. Virginia 7—Buckingham (B1) RSA
f. Virginia 8—Amelia RSA
g. Virginia 9—Greensville RSA
h. Virginia 11—Madison (B1) RSA

[4] 25 MHZ of spectrum was allocated to each cellular system in an MSA or RSA. MSAs are the 306 urbanized areas in the United States, defined by the federal government, and used by the FCC to define the license areas for urban cellular systems. RSAs are the 428 areas defined by the FCC used to define the license areas for rural cellular systems outside of MSAs.

i. Virginia 12—Caroline (B1) RSA
j. Virginia 12—Caroline (B2) RSA
10. Milwaukee MTA
a. Wisconsin 8—Vernon RSA
B. GTE PCS/Vodafone Cellular Overlap Areas
1. Cincinnati-Dayton MTA
a. Cincinnati MSA
b. Dayton MSA
c. Hamilton/Middleton MSA
d. Springfield MSA
e. Ohio 4- Mercer RSA
f. Ohio 8—Clinton RSA
2. Seattle MTA
a. Bellingham MSA
b. Bremerton MSA
c. Olympia MSA
d. Seattle-Everett MSA
e. Tacoma MSA
f. Washington 1—Clallam RSA
g. Washington 2—Okanagan RSA
h. Washington 4—Gray's Harbor RSA
3. Spokeane-Billings MTA
a. Spokane MSA
b. Idaho 1—Boundary RSA
c. Idaho 2—Idaho RSA
d. Montana 1—Lincoln RSA
e. Washington 3—Ferry RSA

In the Overlapping Wireless Markets, the population potentially addressable by wireless mobile telephone systems exceeds 57 million.

Bell Atlantic, Vodafone, and GTE are direct competitors in wireless mobile telephone services in the Cellular/Cellular Overlap Areas. The cellular businesses owned in whole or in part by Bell Atlantic and GTE, Bell Atlantic and Vodafone, or GTE and Vodafone are the two largest providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in the Cellular/Cellular Overlap Areas. Moreover in the PCS/Cellular Overlap Areas, PrimeCo or GTE offer, or will soon offer, PCS wireless mobile telephone service, while either GTE, Vodafone, or CommNet owns all or part of a business offering cellular mobile telephone service. Thus, PrimeCo and GTE, GTE and Vodafone, and GTE and CommNet are among each other's most significant competitors in wireless mobile telephone services in the PCS/Cellular Overlap Areas. In each of the PCS/Cellular Overlap Areas, the GTE, Vodafone, or CommNet cellular business has one of the two largest market shares in the provision of wireless mobile telephone services while PrimeCo and GTE as one of a small number of new PCS entrants in these markets.

Therefore, the Bell Atlantic/GTE Merger and the Bell Atlantic/Vodafone Partnership would significantly increase the level of concentration among firms providing wireless mobile telephone services in each of the Overlapping Wireless Markets. A high level of concentration in the provision of wireless mobile telephone services already exists in each of the Overlapping Wireless Markets. In the Cellular/Cellular Overlap Areas, Bell Atlantic, Vodafone, and GET's individual market shares in the provision of wireless mobile telephone services, if measured on the basis of the number of subscribers, exceeds 35% and their combined market share ranges between 75–95%. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed by the Department of Justice in merger analysis and is explained in more detail in Appendix A to the Supplemental Complaint, concentration in these markets is already in excess of 2800, well above the 1800 threshold at which the Department normally considers a market to be highly concentrated. After the consummation of these transactions, the HHI in these markets will be in excess of 5500.

There is also already a high level of consentration in the provision of wireless mobile telephone services in the PCS/Cellular Overlap Areas. In virtually all, the individual share of the two cellular carriers—one of which is GTE, Vodafone, or CommNet—is the ranger of 30-40% and the combined market share of PrimeCo's PCS and GTE's cellular business, or the GTE PCS and Vodafone cellular business, is generally in the 35-50% range, resulting in an HHI over 2000. In almost all of these markets, PrimeCo or GTE is one of the very few PCS firms that have begun to vigorously compete against, and take share away from, the two dominant cellular firms, one of which is, or will be, owned, in whole or part, by GTE or Vodafone. The competition between PrimeCo and GTE PCS businesses, and between GTE and Vodafone or CommNet cellular businesses, created by PrimeCo's or Vodafone's entry into markets that were previously in effective duopoly, has resulted in lower prices and higher equality in these markets than would otherwise have existed absent such competition.

If GTE and Bell Atlantic merge and Bell Atlantic and Vodafone form their partnership, the Overlapping Wireless Markets will become significantly more concentrated, and the competition between the defendants in wireless mobile telephone services in these markets will be eliminated. As a result of their loss of competition in these markets, there will be an increased likelihood both of unilateral actions by the combined firm to increase prices, diminish the quality or quantity of service provided, or refrain from making investments in network improvements, and of coordinated interaction among the limited number of remaining competitors that could lead to similar anticompetitive results. Therefore, the likely effect of the Bell Atlantic/GTE Merger and the Bell Atlantic/Vodafone Partnership on the provisions of wireless mobile telephone services in the Overlapping Wireless Markets is that prices would increase, and the quality or quantity of service together with incentives to improve network facilities would decrease.

It is unlikely that entry within the next two years into wireless mobile telephone services in the Overlapping Wireless Markets would be sufficient to mitigate the competitive harm resulting from the consummation of these two transactions.

For these reasons, the United States concluded that Bell Atlantic/GTE Merger and the Bell Atlantic/Vodafone Partnership as proposed may substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of wireless mobile telephone services within the Overlapping Wireless Markets.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Requirement

The proposed Final Judgment will preserve competition in the sale of mobile wireless telephone services in each of the Overlapping Wireless Markets by requiring defendants to divest one of their two wireless telephone businesses in each of the overlapping Wireless Markets. This divestiture will eliminate the change in market structure caused by the merger.

The divestiture requirements of the proposed Final Judgment, as stated in Sections IV.A and II.G, direct defendants to divest one of their wireless telephone businesses (to be selected by defendants) in each of the Overlapping Wireless Markets. Section IV.C permits different wireless businesses in separate Overlapping Wireless Markets to be divested to different purchasers, but requires that, for any individual wireless business, the Wireless System Assets be divested entirely to a single purchaser, unless the United States otherwise consents in writing.

The proposed Final Judgment's divestiture provisions are intended to accomplish the ''complete divestiture of the entire business of one of the two wireless systems in each of the Overlapping Wireless Markets,'' as Section II.G states. Section II.G also specifies in detail the types of assets to be divested, which collectively are described throughout the consent decree

as ''Wireless System Assets,'' and addresses some special circumstances concerning the divestiture of those assets. In all of the Overlapping Wireless Markets, Wireless System Assets means all types of assets, tangible and intangible, used by defendants in the operation of each of the wireless businesses to be divested, including the provision of long distance telecommunications service for wireless calls. Section II.G enumerates in detail, without limitation, particular types of assets covered by the divestiture requirement.

For the most part, the divesting defendant is required to transfer to the purchaser the complete ownership and/or other rights to the Wireless System Assets. However, the merged firm will retain a number of other wireless businesses in areas that do not overlap, and prior to the merger each defendant may have had certain assets that were used substantially in the operations of its overall wireless business and that must be retained to some extent to continue the existing operations of the wireless businesses not being divested. Section II.G permits special divestiture arrangements for such assets if they are not capable of being divided between the divested and retained wireless businesses, or if the divesting defendant and the purchaser agree not to divide them. For these assets, the divestiture requirement is satisfied if the divesting defendant grants to the purchaser, at the election of the purchaser, an option to obtain a non-exclusive, transferable license for a reasonable period to use the assets in the operation of the wireless business being divested, so as to enable the purchaser to continue to operate the divested wireless businesses without impairment.

The definition of Wireless System Assets in Section II.G contains special provisions relating to intellectual property. One addresses intellectual property rights that defendants may have under third-party licenses that could not be transferred to a purchaser entirely or by license without the consent of the third-party licensor. If any such assets are used by the wireless businesses being divested, defendants must identify them in a schedule submitted to plaintiff and filed with the Court as expeditiously as possible following the filing of the Supplemental Complaint, and in any event, prior to any divestiture and before the Court approves the proposed Final Judgment. Defendants must explain the necessary consents and how a consent would be obtained for each asset. This proviso is not intended to afford defendants any opportunity to withhold intellectual property rights over which they have any control, which could impair the ability of a purchaser to use the divested wireless business to compete effectively. It relates only to intellectual property assets that defendants have no power to transfer themselves, and defendants must do all that is possible to transfer the entire business of the divested wireless businesses. To make this clear, Section IV.G obligates defendants to cooperate with any purchaser as well as a trustee, if any, to seek to obtain the necessary third-party consents, if any assets require such consents before they may be transferred to a purchaser.

Another proviso relates to certain specific trademarks, trade names and service marks. Section II.G, defining the Wireless System Assets to be divested, generally requires the divestiture of trademarks, trade names and service marks, with the 25 specified exceptions which contain names under which defendants' retained wireless businesses, or their corporate parents or affiliates, do business. Such trademarks, trade names and service marks, like other assets, are either to be divested in their entirety, except for marks and names that must be retained to continue the existing operations of defendants' remaining wireless properties and that are not capable of being divided (or that the divesting defendant and purchaser agree not to divide), which are to be made available to the purchaser through a non-exclusive, transferable license.

Under limited circumstances, defendants are allowed to retain specified portions of the Wireless System Assets in the Overlapping Wireless Markets. First, Section II.G.1 provides that if defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, defendants may retain up to 10 MHZ of broadband PCS spectrum within that PCS/Cellular Overlap Area upon completion of the divestiture of the Wireless System Assets. In this instance, defendants will still otherwise be required to divest the entire PCS business, including 20 MHZ of broadband PCS spectrum, to ensure that the market structure does not change as a result of the merger and that the divested business will be able to compete as effectively under new ownership as under its current ownership.

Second, in the event that defendants elect to divest an interest in a PCS business in one of the PCS/Cellular Overlap Areas, Section II.G.2 of the Final Judgment allows defendants to request approval from plaintiff to partition the PCS license along BTA geographic boundaries, or county boundaries in the Case of Kenosha County, Wisconsin, and retain assets in one or more specified non-overlapping BTAs or in Kenosha County. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the assets to be retained in the non-overlapping BTAs or Kenosha County are not needed to assure the competitive effectiveness of the divested business in the remainder of the MTA, and that the purchaser of the Wireless System Assets in the remainder of the MTA will be able to operate the divested PCS business as a fully competitive entity. Section II.G.2 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap.

Finally, Section II.G.3 allows defendants, with approval from plaintiff, to retain both the PCS business and the non-controlling minority interest in an overlapping cellular business in a PCS/Cellular Overlap Area. Plaintiff's approval of the request shall be subject to a determination by plaintiff in its sole discretion that the retention of a non-controlling minority interest will be entirely passive and will not significantly diminish competition. GTE has a number of non-controlling minority interests in cellular businesses, ranging from 2% to 40%, in the Overlapping Wireless Markets. To be permitted to retain a minority cellular interest, defendants will be required to demonstrate that the interest they wish to keep is entirely passive, such that they receive no competitively sensitive information about the competing cellular business and have no input into the business decisions of the competing cellular provider that could have anticompetitive consequences. Plaintiff, in its sole discretion, will determine that the retention of the non-controlling minority interest will not significantly diminish competition before approval will be granted for the merged firm to retain a minority interest. Section II.G.3 requires defendants to seek this approval at least 90 calendar days prior to the consummation of the transaction which gives rise to the overlap.

Section IV contains other provisions to facilitate divestiture, including notification of the availability of the Wireless System Assets for purchase in Section IV.D, access to information about the Wireless System Assets in Section IV.E, and preservation of records in Section IV.H. In addition, to ensure that a purchaser will be able to operate the divested wireless business without impairment, Section IV.F prohibits defendants from interfering with a purchaser's negotiations to retain

any employees who work or have worked with the Wireless System Assets since the date of the announcement of the merger of partnership, or whose principal responsibility relates to the Wireless System Assets.

B. Timing of Divestiture

In antitrust cases involving mergers in which the United States seeks a divestiture remedy, it requires completion of the divestiture within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in section IV.A, the divestiture of the Wireless System Assets in the Overlapping Wireless Markets on a strict schedule, but provides defendants with some flexibility in recognition of the special timing issues involved in a divestiture of this size and complexity.

Under Section IV.A, defendants must divest the Wireless System Assets of one of the two wireless businesses in the Cellular/Cellular Overlap Areas on or before consummation of the transaction that gives rise to the overlap. The divestitures of the Wireless System Assets for each PCS/Cellular Overlap Area shall occur prior to or at the same time as consummation of the transaction that gives rise to the overlap, or June 30, 2000, whichever is later. Plaintiff may, in its sole discretion, extend this date by up to two thirty-day periods. If one or more divestitures have not been completed as of the date of the consummation of the transaction that gives rise to the overlap, defendants will submit to plaintiff Divestiture List identifying the specific Wireless System Assets in each of the PCS/Cellular Overlap Areas that will be divested.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit the parties an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Wireless System Assets have not been divested upon consummation of the transaction that gives rise to the overlap, there will be no adverse impact on competition given the short duration of the period of common ownership and the detailed requirements of the Hold Separate Order contained in Section IX of the Final Judgment.

Section IV. B of the proposed Final Judgment requires that, in carrying out the divestitures, defendants comply with all of the applicable rules of the FCC, or any waiver of such rules or other authorization granted by the FCC. These rules include 47 CFR 20.6 (spectrum aggregation) and 47 CFR 22.942 (cellular cross-ownership)[5] These FCC requires may add to, but cannot subtract from or impair, the requirements of the proposed Final Judgment, since Section IV.B specifies that authorization by the FCC to conduct divestiture of a wireless business in a particular manner will not modify any of the requirements of the degree. The provisions of the proposed Final Judgment have been designed to avoid any conflict with the FCC's rules.

C. Use of a Trustee Subsequent to Consummation of the Acquisition

The proposed Final Judgment provides in Section IV.A that defendants must divest the Wireless System Assets in each of the Overlapping Wireless Markets in accordance with the schedule contained therein, either to purchasers acceptable to plaintiff in its sole discretion, or to a trustee designated pursuant to Section V of the Final Judgment. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. If a trustee is appointed pursuant to Section V of the proposed Final Judgment, the trustee will then own and control the systems until they are sold to a final purchasers, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the trust, the selection and compensation of the trustee, the responsibilities of the trustee in connection with divestiture and operation of the Wireless System Assets, and the termination of the trust. If defendants have not divested all of their Wireless System Assets in the Overlapping Wireless Markets to approved purchasers in accordance with Section IV.A, Section V. A requires: (1) defendants to identify the Wireless System Assets in each Overlapping Wireless Market to be divested; (2) the Court to appoint a trustee, which shall be selected by the United States; (3) defendants to submit a form of Trust Agreement consistent with the terms of the Final Judgment, and which form agreement must have received approval by the United States; and (4) defendants, after receiving FCC approval for the license transfers, to divest irrevocably the unsold Wireless System Assets to the trustee.

The trustee will then have the obligation and the sole responsibility for the divestiture of any transferred Wireless System Assets. Under Section V.B, the trustee has the authority to accomplish divestitures at the earliest possible time and ''at the best price then obtainable upon a reasonable effort by the trustee.'' In addition, notwithstanding any provision to the contrary, plaintiff may, in its sole discretion, require defendants to include additional assets that substantially relate to the wireless mobile telephone business in the Wireless System Assets to be divested if it would facilitate a prompt divestiture to an acceptable purchaser. This provision allows plaintiff, in its discretion, to require defendants to divest additional Wireless System Assets that substantially relate to the wireless mobile telephone business to ensure that the trustee can promptly locate and divest to a purchaser acceptable to plaintiff. Defendants are not entitled to object to divestiture based on the adequacy of the price the trustee obtains or any other grounds, unless the trustee's conduct amounts to malfeasance. The terms of the trustee's compensation, under Section V.C, will provide incentives based on the price and terms of the divestiture and the speed with which it is accomplished. As provided by Section V.B and V.C., defendants will pay the compensation and expenses of the trustee, and of any investment bankers, attorneys or other agents that the trustee finds reasonably necessary to assist in the divestiture and the management of the Wireless System Assets.

The trusteeship mechanism has been used by the FCC, in a variety of contexts, to provide a short period of time in which to complete a sale of a spectrum licensee that must be divested, while permitting the broader merger or acquisition that necessitates the divestiture to go forward. In this context, the critical feature of the trusteeship arrangement is that the trustee will not only have responsibility for sale of the Wireless System Assets, but will also be the authorized holder of the wireless license, with full responsibility for the operations, marketing and sales of the wireless business to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer

[5] The FCC's spectrum aggregation rules, in 47 CFR 20.6, do not permit a licensee to have an attributable interest in more than 45 MHZ of spectrum licensed for cellular, PCS or SMR with significant overlap in any geographic area. The FCC will attribute an interest if it is controlling, or if in most cases it is 20% or more of the equity, outstanding stock or voting stock of the licensee. The FCC's cellular cross-ownership rules, in 47 CFR 22.942, also prohibit a licensee or any person controlling a licensee from having a direct or indirect ownership interest of more than 5% in both cellular systems in an overlapping cellular geographic service area, unless such interests pose ''no substantial threat to competition.''

have any role in the ownership, operation or management of the Wireless System Assets to be divested following consummation of their merger, as provided by Section V.H, other than the right to receive the proceeds of the sale, and certain obligations to provide cooperation to the trustee in order to complete the divestiture, as indicated in Section V.D. Under V.E., the trustee also has monthly reporting obligations concerning the efforts made to divest the Wireless System Assets. Defendants are precluded under Section V.H from communicating with the trustee, or seeking to influence the trustee, concerning the divestiture or the operation and management of the wireless businesses transferred, apart from the limited communications necessary to carry out the Final Judgment and to provide the trustee with the necessary resources and cooperation to complete the divestitures. Defendants and the trustee are subject to an absolute prohibition on exchanging any non-public or competitively sensitive marketing, sales or pricing information relating to either of the wireless businesses in the Overlapping Wireless Markets. These safeguards will protect against any competitive harm that could arise from coordinated behavior or information sharing between the two wireless businesses during the limited period while sale of the Wireless System Assets is not yet complete, and ensure that the trusteeship arrangement is consistent with the FCC's rules.

Section V.F. requires the trustee to divest the Wireless System Assets to a purchaser or purchasers acceptable to the plaintiff no later than 180 days after the assets are transferred to the trustee. However, since the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section V.F provides that if applications for transfer of a wireless license have been filed by the FCC within the 180-day period, but the FCC has not granted approval before the end of that time, the period for divestiture of the specific Wireless System Assets covered by the license that cannot yet be transferred shall be extended until five days after the FCC's approval is received. This extension is to be applied only to the individual wireless license affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Wireless System Assets for which license transfer approval has been granted.

D. Criteria for the United States' Approval of Purchasers

Under the proposed Final Judgment, the United States plays an important role in the approval of purchasers for each of the divested wireless businesses by ensuring that the purchasers chosen by defendants or the trustee are adequate from a competitive viewpoint. Section IV.A specifies that the United States' approval or rejection of a purchaser is at its sole discretion, but also enumerates certain criteria that the United States will apply in making the approval decision.

In the case of any divestiture by defendants or the trustee, it is important to ensure that the ongoing wireless businesses go to purchasers with the capability and intent to operate them as effective competitors in the lines of business they already serve, and that there are no conditions restricting competition in the terms of the sale. Specifically, Section IV.C of the proposed Final Judgment requires that the divestitures of Wireless System Assets be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's sole satisfaction that: (1) The purchaser(s) has the capability and intent to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; (2) the purchaser(s) has the managerial, operational and financial capability to compete effectively in the provision of wireless mobile telephone service using the Wireless System Assets; and (3) none of the terms of any agreement between the purchaser(s) and either of defendants shall give defendants the ability unreasonably (i) to raise the purchaser(s)'s costs, (ii) to lower the purchaser(s)'s efficiency, (iii) to limit any line of business which a purchaser(s) may choose to pursue using the Wireless System Assets, or otherwise to interfere with the ability of the purchaser(s) to compete effectively. All of these criteria must be satisfied whether the divestiture is accomplished by defendants or the trustee.

E. Other Provisions of the Decree

Section III specifies the persons to whom the Final Judgment is applicable, and provides for the Final Judgment to be applicable to certain interim Parties to whom defendants might transfer the Wireless System Assets, other than purchasers approved by the United States.

Section VI obliges defendants, or the trustee if applicable, to notify the United States of any planned divestiture of Wireless System Assets within two business days of executing a binding agreement with a purchaser. This section enables the United States to obtain information to evaluate the chosen purchaser as well as other prospective purchasers who expressed interest and establishes a procedure for the United States to notify defendants and the trustee whether it objects to a divestiture. The United States' notification of its lack of objection is necessary for a divestiture to proceed. This section also provides for an objection by defendants to a sale by the trustee under the limited situation of alleged malfeasance, but in that case it is possible for the Court to approve a sale over defendants' objection.

Section VII establishes affidavit requirements for defendants to report to the United States on their compliance with the proposed Final Judgment, their activities in seeking to divest the Wireless System Assets prior to consummating the transaction that gives rise to the overlap, and their actions to preserve the Wireless System Assets to be divested.

Section VIII prohibits defendants from financing all or any part of a purchase made by an acquirer of the Wireless System Assets, whether the divestiture is carried out by defendants or by the trustee.

Section IX, the Hold Separate Order, contains important requirements concerning the operation of the wireless businesses before divestiture is complete, and the preservation of the Wireless System Assets as a viable, ongoing business. The obligations of Section IX.A fall on each defendant and both wireless businesses in any Overlapping Wireless Market to ensure that such wireless businesses continue to be operated as separate, independent, ongoing, economically viable and active competitors to the other wireless mobile telecommunications providers in the same area. Section IX.A requires separation of the operations of the two wireless businesses and their books, records and competitively sensitive information. The requirements of Section IX.A serve to ensure that defendants maintain their two wireless businesses in the Overlapping Wireless Markets as fully separate competitors prior to consummating their merger, notwithstanding their expectations that the merger will take place. The requirements also reinforce the provisions of Section V.H concerning the separation of defendants and the trustee after the merger is consummated but white Wireless System Assets are still awaiting sale.

Section IX.B requires the defendant whose assets will be divested (or both, if it has not yet been decided which

system will be divested in a particular market) to take certain specified steps to preserve the assets in accordance with past practices. These steps include maintaining and increasing sales, maintaining the assets in operable condition, providing sufficient credit and working capital, not selling the assets (except with approval of plaintiff), not terminating, transferring or reassigning employees who work with the assets (with certain limited exceptions), and not taking any actions to impede or jeopardize the sale of the assets. Section IX.D obliges each defendant, during the period while they still control Wireless System Assets, to appoint persons not affiliated with the other defendant to oversee the Wireless System Assets to be divested and to be responsible for compliance with the Final Judgment.

In order to ensure compliance with the Final Judgment, Section X gives the United States various rights, including the ability to inspect defendants' records, to conduct interviews and take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and any information the United States obtains using these powers is protected by specified confidentiality obligations, which permit sharing of information with the FCC under a customary protective order issued by that agency or a waiver of confidentiality. Under Section III.B, purchasers of the Wireless System Assets must also agree to give the United States similar access to information.

The Court retains jurisdiction under Section XI, and Section XII provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court. Although the required divestitures will be accomplished in a considerably shorter time, defendants are also precluded from reacquiring the divested properties within the term of the decree.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposal Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530.

The proposed Final Judgment provides, in Section XI, that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the Bell Atlantic/GTE Merger and Bell Atlantic/Vodafone Partnership and a full trial on the merits. The United States is satisfied, however, that the divestiture of Wireless System Assets and other relief contained in the proposed Final Judgment will preserve competition in the provision of wireless mobile telephone services in the Overlapping Wireless Markets. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits of the violations alleged in the complaint. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if the divestitures of the Wireless System Assets are carried out in the manner required by the proposed Final Judgment.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

> (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other consideration bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See United States v. Microsoft, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.''[6] Rather,

[6] 119 Cong. Rec. 24598 (1973). See United States v. Gillette Co., 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A

Continued

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest filing, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981): see also Microsoft, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[7]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' United States v. American Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983) (quoting Gillette Co., 406 F. Supp. at 716), United States v. Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that the court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

Dated: December 22, 1999.

Respectfully submitted,

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Trial Attorneys, U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, 1401 H Street, N.W., Suite 8000, Washington, DC 20530, (202) 514–5621.

Certificate of Service

I hereby certify that copies of the foregoing Plaintiff United States' Competitive Impact Statement, were served via U.S. Mail, first class postage prepaid, on this 22nd day of December, 1999 upon each of the parties listed below:

John Thorne,

Bell Atlantic Corporation, 1320 North Court House Road, Eighth Floor, Arlington, VA 22201, Counsel for Bell Atlantic Corporation.

Steven G. Bardbury, Kirkland & Ellis, 655 Fifteenth Street, N.W., Washington, DC 20005, Counsel for GTE Corporation.

Megan Pierson,

AirTouch Communications, Inc., One California Street, San Francisco, CA 94111, Counsel for Vodafone AirTouch Plc.

Lawrence M. Frankel,

Counsel for Plaintiff.

[FR Doc. 00–197 Filed 1–4–00; 8:45 am]

BILLING CODE 4410–11–M

court need not invoke any of them unless it believes that the comments have raised significant issues and the further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

[7] Bechtel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; United States v. National Broadcasting Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. See also Microsoft, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1971–99]

Announcement of District Advisory Council on Immigration Matters Eighth Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction, and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES AND TIMES: The eighth meeting of the DACOIM is scheduled for January 27, 2000, at 1 p.m.

ADDRESSES: The meeting will be held at the Jacob Javitts Federal Building, 26 Federal Plaza, Room 537, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of January, May, and September 2000.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review

subcommittee reports and facilitate public participation. The DACOIM will be chaired by Charles Troy, Assistant District Director for Management, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements for consideration by the DACOIM at any time before or after the meeting. Written statements should be sent to Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (202) 264–0736. Only written statements received by 5 p.m. on January 24, 2000, will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: December 29, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–139 Filed 1–4–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 12/20/1999

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,179	Bunnies By The Bay (Co.)	Anacortes, WA	12/06/1999	Stuffed Animals.
37,180	Russell Manufacturing (Co.)	Lebanon, VA	12/03/1999	Women's Lingerie.
37,181	Trend Manufacturing (Wkrs)	Parsons, KS	11/30/1999	Vinyl Wristbands.
37,182	Wolverine Tube, Inc (Co.)	Roxboro, NC	12/01/1999	Copper Tubeing for Chillers.
37,183	Lido Fashions (UNITE)	Paterson, NJ	11/19/1999	Ladies' Coats.
37,184	Yates Industries (IUE)	Bordentown, NJ	12/03/1999	Copper Foil.
37,185	Performance Oilfield (Co.)	Kilgore, TX	12/02/1999	Exploration and Production.
37,186	Avdel Cherry Textron (UE)	Parsippany, NJ	12/08/1999	Industrial Fasteners.
37,187	Sun Apparel of Texas (UNITE)	El Paso, TX	12/08/1999	Jackets and Jeans.
37,188	Fruit of the Loom (Wkrs)	Barneveld, NJ	12/02/1999	Industrial Sewing Machines.
37,189	B.F. Goodrich (USWA)	Beliot, WI	12/08/1999	Cylinder Liners, Heads, Crankshafts.
37,190	Tempset, Inc (Co.)	St. Louis, MO	12/07/1999	Thermal Assemblies.

[FR Doc. 00–142 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purposes of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of

Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 12/13/1999

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,159	Casual Coat (UNITE)	Paterson, NJ	11/11/1999	Ladies' Coats.
37,160	Dexter Shoe Co (Comp)	Dexter, ME	12/03/1999	Leather Shoes and Boots.
37,161	Bailey Creation (Wrks)	York, AL	11/30/1999	Children's & Ladies T-Shirts, Jackets.
37,162	Allen Telecom, Inc. (Comp)	Solon, OH	12/03/1999	Radio Frequency Products.
37,163	White Swan Meta (Union)	Dawson Spring, KY	12/02/1999	Health Care Apparel.
37,164	Fogel Neckwear Corp (Comp)	New York, NY	11/23/1999	Men's and Boys' Neckwear.
37,165	Inlet Drilling Alaska Inc (Wrks)	Kenai, AK	12/01/1999	Drilling Services.
37,166	Ashmore Sportwear, Inc (Wrks)	Collinsville, VA	11/17/1999	T-Shirts.
37,167	GL and V/Dorr Oliver, Inc (Wrks)	Hazelton, PA	11/23/1999	Sedimentation Equipment.
37,168	North Star Steel Kentucky (Wrks)	Calvert City, KY	12/03/1999	Structural Steel.
37,169	Shepard Airtronics, Inc (Wrks)	Passaic, NJ	11/15/1999	Rubber Products for Medical Use.
37,170	International Service (Wrks)	Elizabeth, NJ	12/08/1999	Sample Books of Wallpaper & Fabrics.
37,171	Sim's Manufacturing (IBT)	Paynet, OH	12/07/1999	Tractor Cabs.
37,172	Rossmor Industries, Inc (UNITE)	Twinsburg, OH	11/19/1999	Knitted Caps, Headbands & Scarves.
37,173	Dyersburg Corp (Comp)	Elizabethtown, NC	12/02/1999	Knit Fabric.
37,174	Kellwood Co./Sportswear (Wrks)	Monticello, MS	10/29/1999	Men's Work Pants.
37,175	Tuckaseigee Mills, Inc (Comp)	Bryson City, NC	12/01/1999	Comforters, Bedspreads, etc.
37,176	Intersil Corp (IBEW)	Findlay, OH	12/01/1999	Integrated Circuits, Silicon Wafers.
37,177	Acker and Jablow, Inc (Comp)	New York, NY	11/18/1999	Printed Fabrics.
37,178	VF Workwear (Comp)	Erwin, TN	11/30/1999	Men's & Ladies' Work Apparel.

[FR Doc. 00–141 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

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

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 12/06/1999

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,131	Chevron Chemical (Wkrs)	Orange, TX	11/18/1999	Plastic and Polyethlene Resen.
37,132	Eileen Fisher (Wkrs)	Irvington, NY	11/03/1999	Ladies' Apparel.
37,133	Fuchs Systems (Co.)	Salisbury, NC	11/22/1999	Electric Arc Furnaces.
37,134	Advanced Manufacturing (Wkrs)	Willits, CA	11/09/1999	Precision Component Parts.
37,135	HI Fashion (UNITE)	Garfield, NJ	11/17/1999	Ladies' Jackets.
37,136	Lipton (Co.)	Suffolk, VA	11/23/1999	Instant Tea.
37,137	Hale Products (USWA)	Conshohocken, PA	11/18/1999	Pumps for Vehicles and Fire Trucks.
37,138	Headwear U.S.A. (Wkrs)	Pattonsburg, MO	11/18/1999	Caps.
37,139	Friendly Ice Cream (Wkrs)	Troy, OH	11/16/1999	Ice Cream.
37,140	Winatic Corporation (Wkrs)	Vestal, NY	11/15/1999	Transformers.
37,141	Summit Sportswear (Wkrs)	Minor Hill, TN	11/18/1999	T-Shirts.
37,142	Mitchell Energy (Co.)	The Woodlands, TX	11/12/1999	Crude Oil, Natural Gas.
37,143	William Carter Co. (The) (Wkrs)	Harlingen, TX	11/19/1999	Children's Apparel.
37,444	Allied Signal (Co.)	Mishawaka, IN	11/17/1999	Missile Targets.
37,145	HCC, Inc (Wkrs)	Earlville, IL	11/23/1999	Loaders—Agricultural.
37,146	National Standard (Wkrs)	Corbin, KY	11/24/1999	Steel Wire Rods.
37,147	Killark—Hubbell (Wkrs)	St. Louis, MO	11/24/1999	Presses.
37,148	Mt. Sterling—ILSCO (Co.)	Mt. Sterling, KY	11/24/1999	Electrical Connectors.
37,149	Moltrup Steel Products (USWA)	Beaver Falls, PA	11/15/1999	Steel Carbon and Alloy.
37,150	SCR Vision (Wkrs)	Medford, OR	11/22/1999	Optical Sorting/Grading Equipment.
37,151	GHagale Industries (Co.)	Marshfield, MO	11/23/1999	Casual Slacks and Shorts.
37,152	Goss Graphics Systems (USWA)	Wyomissing, PA	11/23/1999	Printing Presses.
37,153	Kelley's Controls	Odessa, TX	11/09/1999	Assemble Electrical Control Systems.
37,154	Phillips Joanna (Wkrs)	Ladd, IL	11/23/1999	Plastic Film.
37,155	Greenfield Industrial (Wkrs)	Solon, OH	11/19/1999	Subland Drills.
37,156	Ray Ban Sun Optics (Wkrs)	San Antonio, TX	11/20/1999	Sunglasses.
37,157	Chinet Company (The) (Co.)	Waterville, ME	11/30/1999	Laminated Molded Fiber Trays.
37,158	Paramount Knit (Co.)	Bourbon, MO	11/30/1999	Knit Headwear, Scarves, Dogsweaters.

[FR Doc. 00–144 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,149]

Moltrup Steel Products Company, Inc., Beaver Falls, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 6, 1999 in response to a worker petition which was filed on behalf of workers at Moltrup Steel Products Company, Incorporated, Beaver Falls, PA.

The three petitioners were separated from the subject firm more than a year prior to the date of the petition (November 15, 1999). Section 223(b)(1) of the Trade Act of 1974 specifies that no certification may apply to any worker whose last separation occurred more than a year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 17th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–146 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,730]

Ray-Ban Sun Optics, Luxottica, Formerly Known as Eyewear Division of Bausch & Lomb, Rochester, New York; 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 November 2, 1999, applicable to workers of Ray-Ban Sun Optics, Rochester, New York. The notice was published in the **Federal Register** on December 2, 1999 (64 FR 67594). The certification was amended on December 6, 1999 to show that the company was formerly known as Eyewear Division of Bausch & Lomb. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of sunglasses. As indicated in the December 6, 1999 amended certification, the subject firm, originally named the Eyewear Division of Bausch & Lomb, was sold in June, 1999 to Luxottica and was renamed Ray-Ban Sun Optics. The State agency reports that some workers wages at the subject firm have been reported to the Unemployment Insurance (UI) tax account of Luxottica.

The intent of the Department's certification is to include all workers of the subject firm affected by increased imports. Therefore, the certification is again amended to include the workers at the Rochester, New York plant whose wages were reported to the Luxottica tax account.

The amended notice applicable to TA–W–36,730 is hereby issued as follows:

All workers of Ray-Ban Sun Optics, Luxottica, formerly known as Eyewear

Division of Bausch & Lomb, Rochester, New York who became totally or partially separated from employment on or after August 11, 1998 through November 2, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–143 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,982]

Robotex, Incorporated, Lumberton, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 25, 1999, in response to a worker petition which was filed on behalf of workers at Robotex, Incorporated, Lumberton, NC.

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, D.C. this 17th day of December 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–145 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3407]

General Electric Company Industrial Systems, Tell City, IN; 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. 2273), an investigation was initiated on September 7, 1999 in response to a petition filed on behalf of workers at General Electric Company, Industrial Systems, Tell City, IN.

An active certification covering the petitioning group of workers remains in effect (NAFTA–3377). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 22nd day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–147 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03340; NAFTA–03340A]

Lambda Electronics, Inc., McAllen, TX; Melville, NY; 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 August 13, 1999, applicable to workers of Lambda Electronics, Inc., McAllen, TX. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52543).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of metal housings for power supplies for electronic products. New information shows that worker separations occurred at the Melville, NY location of Lambda Electronics, Inc. The workers provide engineering and designing services for the subject firms manufacturing facilities including McAllen, TX.

Accordingly, the Department is amending the certification to cover the workers of Lambda Electronics, Inc., Melville, NY.

The intent of the Department's certification is to include all workers of Lambda Electronics, Inc. who were adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–03340 is hereby issued as follows:

All workers of Lambda Electronics, Inc., McAllen, Texas (NAFTA–3340), and Melville, New York (NAFTA–3340A) who became totally or partially separated from employment on or after December 19, 1998 through August 13, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–148 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03353B]

Sara Lee Sock Company, Seaming Department, Knitting Department, Kernersville, NC; 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 September 2, 1999, applicable to workers of Sara Lee Sock Company, Seaming Department, Kernersville, NC. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55753).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Knitting Department of Sara Lee Sock Company, Kernersville, NC. The workers are engaged in the production of men's women's and children's socks.

The intent of the Department's certification is to include all workers of Sara lee Sock Company who were adversely affected by the shift in production to Mexico.

Accordingly, the Department is amending the certification to cover the workers of Sara Lee Sock Company, Knitting Department, Kernersville, NC.

The amended notice applicable to NAFTA–03353 is hereby issued as follows:

All workers of Sara Lee Sock Company, Seaming Department and Knitting Department, Kernersville, North Carolina (NAFTA–3353B) who became totally or partially separated from employment on or after August 16, 1998 through September 2, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of December, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 00–149 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10763, et al.]

Proposed Exemptions; The FINA, Inc. Capital Accumulation Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The FINA, Inc. Capital Accumulation Plan (the Plan) Located in Dallas, Texas

[Application No. D–10763]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of June 4, 1999, to the acquisition, holding, and exercise by the Plan of certain warrants that were issued by Total, S.A. (Total),[1] pursuant to a tender offer (the Exchange Offer) made on May 6, 1999 to all shareholders of PetroFina S.A. (PetroFina), including the Plan, provided that the following conditions were satisfied:

(a) The Plan's acquisition and holding of the warrants issued by Total (the Total Warrants) in connection with the Exchange Offer occurred as a result of an independent act of Total as a corporate entity;

(b) All shareholders of PetroFina, including the Plan, were treated in a like manner with respect to all aspects of the Exchange Offer; and

(c) An independent fiduciary made the determination whether, and to what extent, the Plan should participate in the Exchange Offer.

EFFECTIVE DATE: This exemption, if granted, will be effective as of June 4, 1999.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by Fina, Inc. (Fina). Fina is a Delaware corporation with its principal headquarters in Dallas, Texas. Fina is a wholly owned, indirect subsidiary of PetroFina, a *societe anonyme/naamloze vennootschap* organized under the laws of the Kingdom of Belgium. Fina and its subsidiaries were organized in 1956 as American PetroFina, Incorporated and are part of an international group of companies that are affiliated with PetroFina. Fina, through its subsidiaries, is engaged in crude oil and natural gas exploration and production; petroleum products refining, supply and transportation and marketing; chemical manufacturing and marketing; and natural gas marketing. As of March 31, 1999, the Plan had total assets of approximately $246,215,000. As of March 31, 1999, the Plan had 2,534 participants and beneficiaries.

2. In connection with an earlier merger in which Fina became a subsidiary of PetroFina in August, 1998, PetroFina issued certain warrants (the PetroFina Warrants) to all shareholders of Fina, including the Plan.[2] One PetroFina Warrant entitled the holder to purchase nine-tenths (0.9) of one PetroFina American Depositary Share (a PetroFina ADS), each PetroFina ADS representing one-tenth (0.1) of one ordinary voting share of PetroFina (a

[1] The applicant states that the warrants issued by Total do not constitute ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act.

[2] The applicant states that the PetroFina Warrants were ''employer securities,'' as defined in section 407(d)(1) of the Act but were not ''qualifying employer securities,'' as defined in section 407(d)(5) of the Act. Section 407(a)(1)(A) of the Act prohibits a plan from acquiring or holding any employer security which is not a qualifying employer security. However, the Plan obtained authorization from the Department to acquire, hold, and exercise the PetroFina Warrants, pursuant to an authorization made under Prohibited Transaction Class Exemption 96–62 (61 FR 39988, July 31, 1996). Interested persons may review the information submitted to the Department by Fina in Submission E–00080, which is available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

PetroFina Share). The PetroFina Warrants are exercisable any time prior to August 5, 2003. PetroFina ADSs and PetroFina Warrants are listed for trading on the New York Stock Exchange, Inc. (the NYSE).

3. The Plan allows participants to contribute up to 10% of their pre-tax income to their respective individual accounts in the Plan and 6% of their after-tax earnings to another individual account, or a combination of pre-tax and after-tax contributions to each such account, not exceeding 10%. Each year, Fina contributes to a third account in the Plan, known as the Matching Contributions Account, an amount equal to 100% of the employee's contributions to the Plan, up to a total of 6% of the employee's gross annual income, for all employees who have completed at least one year of service.

Plan assets may be invested in various mutual funds, i.e., a money market fund, U.S. debt index fund, balanced fund, equity index fund, equity growth fund, and a global equity fund. In addition, the Plan has two other investment funds (which are not mutual funds) that hold PetroFina ADSs and PetroFina Warrants, respectively. Prior to the date of the Exchange Offer, all assets in the Matching Contributions Account could be invested only in PetroFina ADSs or PetroFina Warrants. As of March 31, 1999, the Plan held 2,954,328 PetroFina ADSs with a fair market value of approximately $162,457,394, or approximately 66% of the Plan's total assets. As of the same date, the Plan held 720,461 PetroFina Warrants with a fair market value of approximately $10,034,226, or approximately 4% of the Plan's total assets.

4. Effective January 14, 1999, Total, a major international integrated oil and gas company based in France, acquired approximately 41% of the outstanding PetroFina Shares. Consequently, as required by Belgian law, Total made an exchange offer in Belgium for all PetroFina Shares not held by persons in the United States. On May 6, 1999, concurrently with that offer, Total initiated the Exchange Offer in the United States to exchange: (1) Total American Depositary Shares (Total ADSs) for PetroFina ADSs; (2) Total Warrants for PetroFina Warrants; and (3) shares of common stock of Total (the Total Shares) for PetroFina Shares. Pursuant to the Exchange offer: (1) holders of PetroFina Shares could exchange two such shares for nine Total Shares; (2) holders of PetroFina ADSs could exchange 10 such ADSs for nine Total ADSs; and (3) holders of PetroFina Warrants could exchange 100 such warrants for 81 Total Warrants. It is represented that the Exchange Offer was an independent act of Total as a corporate entity and that all shareholders of PetroFina, including the Plan, were treated in a like manner with respect to all aspects of the Exchange Offer.

The Total Warrants will expire concurrently with the PetroFina Warrants and otherwise have terms and conditions similar to the PetroFina Warrants, after giving effect to the exchange ratio for the underlying shares. Each Total Warrant entitles the holder to acquire one Total ADS at a price of $46.94. The terms of the Exchange Offer were set forth in Total's Exchange Offer Prospectus, dated May 6, 1999, that was part of the Total registration statement on file with the Securities and Exchange Commission. Total ADSs and Total Warrants are listed for trading on the NYSE.

5. The PetroFina Board of Directors instructed Paribas, a European-based investment advisor, to evaluate, from a financial perspective, the fairness of the consideration to be received by the shareholders of PetroFina in the Exchange Offer. On April 7, 1999, Paribas delivered its opinion to the PetroFina Board of Directors to the effect that, as of such date, the terms and conditions of the Exchange Offer proposed by Total to PetroFina shareholders were fair from a financial perspective. A similar fairness opinion was provided by the Morgan Guaranty Trust Company of New York (Morgan) on the same date. The PetroFina Board of Directors concluded that the terms and conditions of the Exchange Offer proposed by Total were fair and recommended that PetroFina shareholders accept the offer and tender their PetroFina Shares, ADSs, and Warrants, pursuant to the Exchange Offer.

6. The Plan was amended to grant to the the Plan Committee, the named fiduciary of the Plan, broad discretionary authority to establish procedures to facilitate and/or implement the decision to participate in the Exchange Offer. The Plan was also amended to provide that U.S. Trust Company, N.A. (U.S. Trust) would be appointed as an independent fiduciary for the Plan to determine whether, and to what extent, the Plan should participate in the Exchange Offer. It is represented that, with assets under management totalling approximately $56 billion, U.S. Trust is an experienced and qualified fiduciary with extensive trust and management capabilities, including discretionary asset management, asset allocation and diversification, investment advice, securities trading, and independent fiduciary assignments under the Act.

7. U.S. Trust determined that the Plan should participate fully in the Exchange Offer and instructed Boston Safe Deposit and Trust Company (Boston Safe), the Plan trustee, accordingly. U.S. Trust represents that its decision was based upon the following considerations. First, the Exchange Offer clearly represented a significant premium to PetroFina's trading price at the same time of the offer, as well as historically, and the markets had maintained that premium to date based upon the proposed exchange ratio. Second, the Exchange Offer translated into valuation multiples that were above PetroFina's historical valuation levels and above the median levels for its peer group. Third, on a pro forma basis, Total Shares were trading in a reasonable range of valuation multiples relative to comparable companies, and, therefore, represented a fairly valued investment into which to exchange. Finally, U.S. Trust determined that the fairness opinion provided to PetroFina by its financial advisers, Paribas and Morgan, indicated that the Exchange Offer was fair and reasonable, and a review of the accompanying analysis by such advisers supported that conclusion.

8. The applicant represents that the following is a summary of the Exchange Offer. On June 4, 1999, the expiration date of the Exchange Offer, the Plan, pursuant to the determination by U.S. Trust, tendered 2,977,144 PetroFina ADSs, each with a fair market value of $54.75, the closing price on the NYSE as of that date. The Plan received nine Total ADSs in exchange for each ten PetroFina ADSs tendered. Also on June 4, 1999, the Plan tendered 614,212 PetroFina Warrants, each with a fair market value of $13.88, the closing price on the NYSE as of that date. The Plan received 81 Total Warrants for each 100 PetroFina Warrants tendered. Each participant in the Plan received his or her allocable share of Total ADSs and Total Warrants in exchange for the PetroFina ADSs and PetroFina Warrants held by his or her individual account, as of June 4, 1999. Following the exchange, participants exercise control over the Total Warrants and Total ADSs acquired in the exchange, through their individual accounts in the Plan, in the same manner as they did over the comparable PetroFina securities.[3] The

[3] In connection with the Plan's earlier acquisition of the PetroFina Warrants, pursuant to an authorization made by the Department under PTE 96–62 (*see* Footnote 2), Plan participants were provided by Fina with instructional material

Continued

applicant represents that the Exchange Offer was successful, and Total subsequently changed its name to Total Fina, S.A.

9. In summary, the applicant represents that the subject transactions satisfied the criteria for an exemption under section 408(a) of the Act because, among other things: (a) The Plan's acquisition and holding of the Total Warrants in connection with the Exchange Offer occurred as a result of an independent act of Total as a corporate entity; (b) all shareholders of PetroFina, including the Plan, were treated in a like manner with respect to all aspects of the Exchange Offer; (c) U.S. Trust, acting as an independent fiduciary for the Plan, made the determination whether, and to what extent, the Plan should participate in the Exchange Offer; and (d) Boston Safe, as the Plan trustee, ensured that each Plan participant received his or her allocable share of Total ADSs and Total Warrants in exchange for the PetroFina ADSs and PetroFina Warrants held by his or her individual account, as of June 4, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bankers Trust Company (BTC), Located in New York, New York

[Application No. D–10837]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The proposed granting to BTC (a) by Aslan Realty Partners, L.P. (the LP), and by Aslan GP, LLC (the General Partner) of security interests in the capital commitments of certain employee benefit plans (the Plans) investing in the LP, (b) by the LP of a borrower account funded by the Plans' capital contributions (Borrower Collateral Account), and (c) by the LP and the General Partner of the right to make capital calls (Capital Calls), and provide notice thereof (Capital Call Notices) under the agreement under which the LP is organized and operated (the Agreement), where BTC is the representative of certain lenders (the Lenders) that will fund a so-called ''credit facility'' providing loans to the LP and where the Lenders are parties in interest with respect to the Plans; and (2) the execution of an agreement and estoppel (the Estoppel) under which the Plans agree to honor Capital Calls made to the Plans by BTC, provided that (i) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (ii) the decisions on behalf of each Plan to invest in the LP, and to execute such grants and agreements in favor of BTC, are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; (iii) with respect to Plans that have invested or may invest in the LP in the future, such Plans have or will have assets of not less than $100 million and not more than 5% of the assets of any such Plan are or will be invested in the LP. For purposes of this condition (iii), in the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (e.g., through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans; and (iv) the general partner of the LP must be independent of BTC, the Lenders and the Plans.

Summary of Facts and Representations

1. The LP is an Illinois limited partnership, the sole general partner of which is the General Partner, which is a Delaware limited liability company. The General Partner is a separate affiliate of Transwestern Investment Company, L.L.C. (TWIC), a Delaware limited liability company. The General Partner is an entity unrelated to BTC, the Lenders and the Plans. The LP will dissolve no later than September, 2007, and will be self-liquidating. The LP was formed by the General Partner (as sole General Partner), with the intent of seeking capital commitments from a limited number of prospective investors who would become limited partners (the Partners) of the LP. There are 19 current and prospective Partners having, in the aggregate, irrevocable, unconditional capital commitments of at least $236,000,000.

2. The LP has been organized to establish an integrated, self-administered and self-managed real estate operating company (see paragraph 11, below). The LP will make investments in real estate including, but not limited to: (i) The acquisition or development of office, retail, industrial, multi-family, parking garage, corporate real estate assets and other types of real estate assets, (ii) the acquisition of an interest in real estate or the acquisition of interests in public or private real estate investment trusts and corporations, limited partnerships and limited liability companies whose primary assets are commercial real estate, and (iii) the acquisition of publicly-traded or privately-traded debt or equity securities of issuers whose primary assets are real estate. The LP believes that significant opportunities exist to achieve superior risk-adjusted returns on its investments in excess of 20% per annum over a three- to five-year period. Proceeds from the sale or refinancing of properties generally will not be reinvested by the LP. Such proceeds generally will be distributed to the Partners on a quarterly basis or after a sale or financing, so that the LP will be self-liquidated.

3. It is contemplated that the LP will incur short-term indebtedness for the acquisition of particular investments and for working capital purposes (with the expectation that such acquisition indebtedness will be repaid from the Partners' capital commitments and/or from mortgage debt). This indebtedness will take the form of a revolving credit agreement (described in paragraph 5, below) secured by, among other things, a first, exclusive, and prior security interest and lien in and to (1) the Partners' capital commitments, (2) the Borrower Collateral Account, and (3) the Capital Calls, *i.e.,* the rights to call capital under the Agreement. The Borrower Collateral Account is an account established by the General Partner with BTC to hold the Partners' capital contributions.

4. The Agreement requires each Partner to execute a subscription agreement that obligates the Partner to make contributions of capital up to a specified maximum. The Agreement requires Partners to make capital contributions to fulfill this obligation upon receipt of notice from the General Partner. Under the Agreement, the General Partner may make Capital Calls up to the total amount of a Partner's capital commitment upon 15 business days' notice, subject to certain

explaining the value of the warrants and how that value could be realized, *i.e.,* either by selling or exercising the warrants prior to their expiration date. As noted in the second paragraph of Item 4, above, the Total Warrants will expire concurrently with the PetroFina Warrants and otherwise have terms and conditions similar to the PetroFina Warrants. The applicant represents that it will continue to provide Plan participants with pertinent information regarding the Total Warrants, including periodic reminders of the deadline to sell or exercise them.

limitations. The Partners' capital commitments are structured as unconditional, binding commitments to contribute capital when Capital Calls are made by the General Partner. All such monies to be paid by the Partners pursuant to Capital Calls are to be deposited to the Borrower Collateral Account. In the event of a default by a Partner, the LP may exercise any of a number of specific remedies.

The Partners constituting over 90% of the equity interests and their investments in the LP are:

Name of partner	Capital commitment
Bell South Master Pension Trust	$72,956,877
Ameritech Pension Trust	25,000,000
Burgundy, Inc	10,000,000
Allstate Insurance Company	25,000,000
The Bell South Corporation Representable Employees Health Care Trust—Retirees	9,119,610
The Bell South Corporation RFA VEBA Trust	9,119,610
Joshua Arnow and Elyse Arnow Bril	225,000
JWA Investment Company	700,000
New York Life Insurance Company	20,000,000
Pew Memorial Trust	9,990,000
J.H. Pew Freedom Trust	2,100,000
J.N. Pew, Jr. Trust	1,050,000
Mabel Pew Myrin Trust	1,350,000
Northwestern Memorial Hospital	3,000,000
Massachusetts Bay Transportation Authority Retirement Fund Employees' Pension Plan Trust	15,000,000
The Medical Trust	600,000
Northwestern University	15,000,000
Private Syndicate Pty Ltd. As Trustee of Alternative Investment Private Syndicate	10,000,000
RHA Investment Company	700,000

5. The applicant states that the LP will incur indebtedness in connection with many of its investments. In addition to mortgage indebtedness, the LP will incur short-term indebtedness for the acquisition of particular investments. This indebtedness will take the form of a credit facility (the Credit Facility), described in representation 6, below, secured by, among other things, a pledge and assignment of each Partner's capital commitment. This type of facility will allow the LP to consummate investments quickly without having to finalize the debt/equity structure for an investment or having to arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Partners and the LP. Under the Agreement, the General Partner may encumber Partners' capital commitments, including the right to call for capital contributions, to one or more financial institutions as security for the Credit Facility. Each of the Partners has appointed the General Partner as its attorney-in-fact to execute all documents and instruments of transfer necessary to implement the provisions of the Agreement. In connection with this Credit Facility, each of the Partners is required to execute documents customarily required in secured financings, including an agreement to honor Capital Calls unconditionally.

6. BTC will become agent for a group of Lenders providing a $175 million revolving Credit Facility to the LP. BTC will also be a participating Lender. Some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LP by virtue of such Lenders' (or their affiliates') provision of fiduciary or other services to such Plans with respect to assets other than the Plans' interests in the LP. BTC is requesting an exemption to permit the Plans to enter into security agreements with BTC, as the representative of the Lenders, whereby such Plans' capital commitments to the LP will be used as collateral for loans made under the Credit Facility to the LP, when such loans are funded by Lenders who are parties in interest to one or more of the Plans. However, BTC represents that neither it nor any Lender will act in any fiduciary capacity for the decision made by any of the Plans to invest in the LP (as discussed in Paragraph 13, below).

The Credit Facility will be used to provide immediate funds for real estate acquisitions made by the LP, as well as for the payment of LP expenses. Repayments will be secured generally by the LP from the Partners' capital contributions, the Borrower Collateral Account and Capital Calls on the Partners' capital commitments. The Credit Facility is intended to be available until February 3, 2002. The LP can use its credit under the Credit Facility either by direct or indirect borrowings, by Lender guaranties, or by requesting that letters of credit be issued. All Lenders will participate on a pro rata basis with respect to all cash loans, guaranties or letters of credit up to the maximum of the Lenders' respective commitments. All such loans, guaranties and letters of credit will be issued to the LP or an entity in which the LP owns a direct or indirect interest (a Qualified Borrower), and not to any individual Partner. All payments of principal and interest made by the LP or a Qualified Borrower will be allocated pro rata among all Lenders.

7. The Credit Facility will be a recourse obligation of the LP, the repayment of which is secured primarily by the grant of a security interest to BTC, as agent under the Credit Facility for the benefit of the Lenders, from the LP, in both: (a) The Partners' capital commitments and (b) the Borrower Collateral Account. In addition, the LP and the General Partner will grant BTC, as agent under the Credit Facility for the benefit of the Lenders, a security interest in the Capital Calls and Capital Call Notices. The Borrower Collateral Account will be assigned to BTC to secure repayment of the indebtedness incurred under the Credit Facility. BTC has the right to apply any or all funds in the Borrower Collateral Account toward payment of the indebtedness in any manner it may elect. The capital commitments are fully recourse to all the Partners and to the General Partner. In the event of default under the Credit Facility, the agent (*i.e.,* BTC) has the right to make Capital Calls unilaterally on the Partners to pay their unfunded capital commitments, and will apply cash received from such Capital Calls to any outstanding debt.

8. Under the Credit Facility, each Partner that is a Plan will execute an

acknowledgment (the Estoppel) pursuant to which it acknowledges that the LP and the General Partner have pledged and assigned to BTC, for the benefit of each Lender which may be a party in interest (as defined in Act section 3(14)) of such Partner, all of their rights under the Agreement relating to capital commitments and Capital Call Notices. The Estoppel will include an acknowledgment and covenant by the Plan that, if an event of default exists, such Plan will unconditionally honor any Capital Call made by BTC in accordance with the Agreement up to the unfunded capital commitment of such Plan to the LP.

9. The applicant represents that at the present time the following Plans are partners in the LP:

(a) The Ameritech Pension Trust (the Ameritech Trust) holds the assets of three defined benefit plans (the Ameritech Plans) which own interests in the LP. The Ameritech Trust has made a capital commitment of $25 million to the LP. The applicant states that some of the Lenders may be parties in interest with respect to some of the Ameritech Plans in the Ameritech Trust by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Ameritech Plans with respect to Ameritech Trust assets other than their limited partnership interests in the LP. The total number of participants in the three Ameritech Plans is approximately 118,000, and the approximate fair market value of the total assets of the Ameritech Plans held in the Ameritech Trust as of December 31, 1997 is $13.7 billion.

The applicant represents that the fiduciary of the Ameritech Plans generally responsible for investment decisions in the real estate area for internally managed assets is the Ameritech Corporation Asset Management Committee, the Chief Investment Officer of Ameritech Corporation, and/or the Ameritech Corporation Investment Management Department's Real Estate Committee (comprised of the staff real estate professionals and another Investment Management Department Director), depending on the size and type of investment. The fiduciary responsible for reviewing and authorizing the Ameritech Pension Trust's investment in the LP under this proposed exemption was collectively the Chief Investment Officer of Ameritech Corporation, along with the members of the Ameritech Corporation Investment Management Department's Real Estate Committee.

(b) The BellSouth Master Pension Trust (the BellSouth Pension Trust), holds the assets of two defined benefit plans (the BellSouth Pension Plans), which own interests in the LP. The BellSouth Pension Trust has made a capital commitment of approximately $73 million to the LP. The applicant states that some of the Lenders may be parties in interest with respect to some of the BellSouth Pension Plans in the BellSouth Pension Trust by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such BellSouth Pension Trust assets other than their membership interests in the LP. The total number of participants in the two BellSouth Pension Plans is approximately 137,703, and the approximate fair market value of the total assets of the BellSouth Pension Plans held in the BellSouth Pension Trust as of December 31, 1997 is $17.3 billion.

The applicant represents that the fiduciary generally responsible for investment decisions in real estate matters on behalf of both BellSouth Pension Plans is the BellSouth Corporation Treasurer, who was the fiduciary responsible for reviewing and authorizing the investment in the LP.

(c) The BellSouth Corporation Representable Employees Health Care Trust—Retirees (BellSouth Health Care Trust) holds the assets of two welfare benefit plans (the BellSouth Health Care Plans) which own interests in the LP. The BellSouth Health Care Trust has made a capital commitment of approximately $9 million to the LP. The applicant states that some of the Lenders may be parties in interest with respect to some of the BellSouth Health Care Plans in the BellSouth Health Care Trust by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such BellSouth Health Care Trust assets other than their membership interests in the LP. The total number of participants in the two BellSouth Health Care Plans is approximately 30,000, and the approximate fair market value of the total assets of the BellSouth Health Care Plans held in the BellSouth Health Care Trust as of December 31, 1997 is $1 billion. The applicant represents that the fiduciary generally responsible for investment decisions in real estate matters on behalf of both BellSouth Health Care Plans is the BellSouth Corporation Treasurer, who was responsible for reviewing and authorizing the investment in the LP.

(d) The BellSouth Corporation RFA VEBA Trust (BellSouth VEBA Trust) holds the assets of one welfare benefit plan, the BellSouth Group Life Plan which owns interests in the LP. The BellSouth VEBA Trust has made a capital commitment of approximately $9 million to the LP. The applicant states that some of the Lenders may be parties in interest with respect to the BellSouth Group Life Plan in the BellSouth VEBA Trust by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such BellSouth VEBA Trust assets other than its membership interests in the LP. The total number of participants in the BellSouth Group Life Plan is approximately 133,560, and the approximate fair market value of the total assets of the BellSouth Group Life Plan held in the BellSouth VEBA Trust as of December 31, 1997 is $937 million. The applicant represents that the fiduciary generally responsible for investment decisions in real estate matters on behalf of the BellSouth Group Life Plan is the BellSouth Corporation Treasurer, who was responsible for reviewing and authorizing the investment in the LP.

10. The applicant represents that the Plans listed in paragraph 9 are currently the only employee benefit plans subject to the Act that are Partners of the LP. However, the applicant states that it is possible that one or more other Plans will become Partners of the LP in the future. Thus, the applicant requests relief for any such Plan under this proposed exemption, provided the Plan meets the standards and conditions set forth herein. In this regard, such Plan must be represented by a fiduciary independent of the General Partner, the Lenders and BTC. Furthermore, the General Partner, who also must be independent of the Lenders and BTC, must receive from the Plan one of the following:

(1) A representation letter from the applicable fiduciary with respect to such Plan substantially identical to the representation letter submitted by the fiduciaries of the other Plans, in which case this proposed exemption, if granted, will apply to the investments made by such Plan if the conditions required herein are met; or

(2) Evidence that such Plan is eligible for a class exemption[4] or has obtained an individual exemption from the Department covering the potential prohibited transactions which are the subject of this proposed exemption.

11. BTC represents that the LP has obtained an opinion of counsel that the

[4] For example, PTE 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are managed by a ''qualified professional asset manager'' (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

LP will constitute an ''operating company'' under the Department's plan asset regulations [see 29 CFR 2510.3–101(c)] if the LP is operated in accordance with the Agreement and the private placement memorandum distributed in connection with the private placement of the LP Partnership interests.[5]

12. BTC represents that the Estoppel constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships or limited liability companies, wherein the financing institutions do not obtain security interests in the real property assets of the partnership or limited liability companies. BTC also represents that the obligatory execution of the Estoppel by the Partners for the benefit of the Lenders was fully disclosed in the Private Placement Memorandum as a requisite condition of investment in the LP during the private placement of the Partnership interests. BTC represents that the only direct relationship with respect to the LP between any of the Partners and any of the Lenders is the execution of the Estoppel. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, are exclusively between the Lenders and the LP. BTC represents that the proposed execution of the Estoppel will not affect the ability of a Plan to withdraw from investment and participation in the LP.[6] The only Plan assets to be affected by the proposed transactions are any funds which must be contributed to the LP in accordance with requirements under the Agreement to make Capital Calls to honor a Partner's capital commitments.

13. BTC represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to any of the Plans' investments in the LP and that BTC is independent of and unrelated to those fiduciaries (the Fiduciaries) responsible for authorizing and overseeing the Plans' investments in the LP. Each of the Fiduciaries represents independently that its authorization of Plan investments in the LP was free of any influence, authority or control by the Lenders, including BTC. Each of the Fiduciaries represents that the Plan's investments in and capital commitments to the LP were made with the knowledge that each Partner would be required subsequently to grant a security interest in Capital Calls and capital commitments to the Lenders and to honor requests for cash contributions, also known as ''drawdowns'', made on behalf of the Lenders without recourse to any defenses against the General Partner. Each of the Fiduciaries individually represents that it is independent of and unrelated to BTC and the Lenders and that the investment by the Plan for which that Fiduciary is responsible continues to constitute a favorable investment for the Plan and that the execution of the Estoppel is in the best interests and protective of the participants and beneficiaries of such Plan. In the event another Plan proposes to become a Partner, the applicant represents that it will require similar representations to be made by such Plan's independent fiduciary. Any Plan proposing to become a Partner in the future and needing to avail itself of the exemption proposed herein will have assets of not less than $100 million,[7] and not more than 5% of the assets of such Plan will be invested in the LP. As noted in paragraph 9 above, the Plans currently investing in the LP all have total assets which exceed $100 million and have committed amounts to the LP which are less than 5% of their total assets.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the LP were authorized and are overseen by the Fiduciaries, which are independent of the Lenders and BTC, and other Plan investments in the LP from other employee benefit plans subject to the Act will be authorized and monitored by independent Plan fiduciaries; (2) None of the Lenders (including BTC) has any influence, authority or control with respect to any of the Plans' investment in the LP or the Plans' execution of the Estoppel; (3) Each Fiduciary invested in the LP on behalf of a Plan with the knowledge that the Estoppel is required of all Partners investing in the LP, and all other Plan fiduciaries that invest their Plan's assets in the LP will be treated the same as other Partners are currently treated with regard to the Estoppel; (4) Any Plan which has invested or may invest in the LP in the future, which needs to avail itself of the exemption proposed herein, has or will have assets of not less than $100 million,[8] and not more than 5% of the assets of any such Plan are or will be invested in the LP; and (5) the General Partner of the LP is independent of BTC, the Lenders and the Plans.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other

[5] The Department notes that the term ''operating company'' as used in the Department's plan asset regulation cited above includes an entity that is considered a ''real estate operating company'' as described therein (see 29 CFR 2510.3–101(e)). However, the Department expresses no opinion in this proposed exemption regarding whether the LP would be considered either an operating company or a real estate operating company under such regulations. In this regard, the Department notes that it is providing no relief for either internal transactions involving the operation of the LP or for transactions involving third parties other than the specific relief proposed herein. In addition, the Department encourages potential Plan investors and their independent fiduciaries to carefully examine all aspects of the LP's proposed real estate investment program in order to determine whether the requirements of the Department's regulations will be met.

[6] In this regard, the Department cautions Plan fiduciaries to fully understand all aspects of the Agreement, including the terms of the Estoppel, prior to making any capital commitments to the LP. The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently when making investment decisions for the plan.

[7] In the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis (*e.g.,* through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans.

[8] See footnote 4, *ibid.*

provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of December, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–221 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–49; Exemption Application No. D–10244, et al.]

Grant of Individual Exemptions; Massachusetts Mutual Life Insurance Company (MM), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Massachusetts Mutual Life Insurance Company (MM) Located in Springfield, MA

[Prohibited Transaction Exemption 99–49; Exemption Application No. D–10244]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: the sale and/or exchange by MM of a partial or complete interest in certain properties (the Properties) from its general investment account assets to one or more separate investment accounts (Separate Accounts), or other types of entities (such as limited partnerships or limited liability companies, hereafter referred to as ''Other Entities'' as defined in Section III) managed by MM or an affiliate which are deemed to hold plan assets under 29 CFR section 2510.3–101 (the Plan Asset Regulation), for which MM shall receive as consideration cash and/or a corresponding interest in such Separate Account or Separate Accounts or Other Entities, provided the conditions set forth in section II are satisfied.

Section II. Conditions

(A) The sale and exchange of the Properties is a one-time transaction with respect to each Separate Account or Other Entity of MM which will be established for the Properties; i.e., all Properties transferred in that transaction will be conveyed at the same time, and no further properties will be transferred from MM to such Separate Account or Other Entity;

(B) In no event shall MM provide any financing with respect to any sale or exchange transaction which is the subject of this exemption;

(C) Before the subject transaction is consummated, (i) an independent appraisal firm will have valued each Property to be transferred by MM to one or more Separate Accounts or Other Entities; (ii) if the appraisal is more than one year old, the value of each Property so appraised will be updated by the appraiser as of a date not less than two weeks prior to the issuance of interests to third party investors in the Separate Accounts or Other Entities, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value; (iii) an independent fiduciary for each employee benefit plan subject to the Act (collectively, the Plans) will, prior to agreeing to invest in the Separate Account or Other Entity, be provided with all information regarding the Properties to be sold to the Separate Account or Other Entity, including third party appraisals and a private placement memorandum or other offering document, which will describe the legal structure and include risk disclosures, a summary of principal terms and a schedule of fees; and (iv) such independent fiduciary will have reviewed all pertinent terms of the sale and exchange of the Properties to the Separate Accounts or Other Entities and will have concluded that the transaction is in the best interest of the Plan;

(D) Any Covered Transaction will be effected at fair market value as of the time of the transaction; and

(E) Only Plans with total assets having an aggregate fair market value of at least $50 million are permitted to engage in the Covered Transactions, provided, however, that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization,

whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity engages in a Covered Transaction, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such group trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which engages in a Covered Transaction, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to Plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $100 million. (In addition, none of the entities described above are formed for the sole purpose of engaging in the Covered Transactions.)

Section III. Definitions

(A) The term ''Other Entities'' means any investment advisory account, trust, limited partnership or other investment account or fund managed by MM or its affiliate, as defined below in (C), that is neither a separate account managed by MM or its affiliate, nor a general account maintained by MM or its affiliate,

(B) The terms ''general account'' or ''general investment account'' mean the general asset account of MM and any of its affiliates, as defined below in (C), which are insurance companies licensed to do business in at least one State, as defined in section 3(10) of the Act.

(C) The term ''affiliate'' of MM includes:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with MM,

(ii) Any officer, director, or employee of MM or person described in (C)(i), and

(iii) Any partnership in which MM is a partner.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on August 11, 1999 at 64 FR 43738.

Written Comments

The only written comments received by the Department were submitted by the applicant, MM. These comments sought several changes to the Notice, each of which is discussed below.

First, the exemption as proposed had permitted transfers of partial or complete interests in real property from MM to one or more separate investment accounts. The applicant requested that the exemption be expanded to include transfers to one or more other types of entities, such as limited partnerships or limited liability companies, managed by MM or its affiliates, so long as these Other Entities are deemed to hold ''plan assets'' under the Plan Asset Regulation. MM stated that it was requesting this change to provide Plans with the opportunity to invest in vehicles which are most advantageous to the particular type of real estate investment involved in the transaction. Since the Plan fiduciary would still receive all pertinent information about the investment and have adequate opportunity to evaluate the terms of the Plan's investment, the Department has agreed to expand the Covered Transactions of Section I of the exemption to include Other Entities as requested by MM.

In addition, the Department has added a definition of the term ''Other Entities'' as well as definitions of the terms ''general account'' and ''affiliate'' of MM in order to clarify the meaning of these terms with respect to the Covered Transactions in Section I. These definitions are included in Section III of this exemption and are based on similar definitions included in a prior exemption for MM covering the sale or transfer of an interest in a shared investment between two or more accounts (subject to the conditions described therein). In this regard, interested persons should see Prohibited Transaction Exemption 98–28 (63 FR 33727, June 19, 1998).

With respect to the appraisals of the Properties to be furnished to the independent Plan fiduciaries, the applicant had represented in the Notice that the value of each Property so appraised will be confirmed by the appraiser as of a date not more than two weeks prior to the issuance of interests to third party investors in the Separate Accounts, and if a material change has occurred, the appraiser will revise its appraisal to reflect that new value. The applicant in its comment letter noted that the updated appraisal should be provided to the independent fiduciary not later than two weeks before the issuance of interests to third party investors in the Separate Accounts (or Other Entities) in order to provide the independent fiduciaries adequate opportunity to review the updated appraisals and re-evaluate their investment decisions by the closing date. The applicant also confirmed that any Covered Transaction will be effected at fair market value as of the time of the transaction.

Accordingly, the Department has agreed to this change, and has revised Section II.(C)(ii) of the granted exemption to require that if the appraisal is more than one year old, the value of each Property so appraised will be updated by the appraiser as of a date not less than two weeks prior to the issuance of interests to third party investors in the Separate Accounts or Other Entities, and if a material change has occurred the appraiser will revise its appraisal to reflect that new value. The Department has added Section II.(D) to reflect MM's representation that any Covered Transaction will be effected at fair market value as of the time of the transaction. The Department notes that Section II.(D) would not be satisfied if the appraisal did not accurately represent the fair market value of each Property at the time of the transaction. It is the responsibility under the granted exemption for MM to have the appraisals updated as necessary to reflect fair market value.

MM also sought clarification with respect to the requirement contained in Section II.(C)(iii) of the Notice that independent appraisals of the Properties will be provided to the independent fiduciaries for the Plans prior to their agreement to invest in a Separate Account. MM commented that in an investment vehicle with a large number

of Properties, the appraisals may contain thousands of pages. Accordingly, MM asked the Department to confirm that Section II.(C)(iii) will be satisfied if executive summaries of the appraisals of each Property are delivered to the independent fiduciary for each Plan, with the full text of any appraisal available upon request by the independent fiduciary for the Plan, and the appraisals and accompanying exhibits readily available for inspection and copying by such fiduciary at a central site. The Department has agreed that this procedure would satisfy the condition contained in Section II.(C)(iii). The Department notes that such executive summaries should be reasonably comprehensive and convey sufficient information to enable a Plan fiduciary to determine whether a review of the full text of an appraisal is necessary.

In its comment letter, MM also noted a correction to Representation 2 of the Summary of Facts and Representations contained in the Notice (the Summary). MM stated that its life and health insurance business was sold on March 31, 1996. After a transition period under the purchase and sale agreement, MM will no longer offer group life and health insurance. Also, with respect to Representation 3 of the Summary, MM stated that effective June 1, 1999, the defined benefit plan for Connecticut Mutual Life Insurance Company employees was merged into the MassMutual Employee Pension Plan.

The Department has considered the entire record and has determined to grant the exemption with the revisions noted herein.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Bankers Trust Company (BT) Located in New York, NY

[Prohibited Transaction Exemption 99–50; Exemption Application No. D–10756]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the lending of securities to affiliates of BT, a wholly owned subsidiary of Deutsche Bank AG (DB), which are (i) either banks, supervised by the United States or by a State within the United States, or broker-dealers registered under the Securities Exchange Act of 1934 (the 1934 Act), or (ii) certain foreign affiliates (the Foreign Affiliates) of BT and DB which are broker-dealers or banks in jurisdictions specified in this exemption (collectively, the Affiliated Borrowers), by employee benefit plans (the Client Plans), including commingled investment funds holding Client Plan assets, for which BT, DB, or either of their current or future affiliates or successors acts as securities lending agent (or sub-agent) (the DB Lending Agent); and (2) the receipt of compensation by the DB Lending Agent in connection with these transactions, provided the general conditions set forth below in Section II are met.

Section II. General Conditions

(a) For each Client Plan, neither the DB Lending Agent nor an Affiliated Borrower, nor an affiliate of either, has or exercises discretionary authority or control with respect to the investment of Client Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(b) Any arrangement for a DB Lending Agent to lend Client Plan securities to an Affiliated Borrower in either an agency or sub-agency capacity is approved in advance by a Client Plan fiduciary who is independent of the DB Lending Agent.[1] In this regard, the independent Client Plan fiduciary also approves the general terms of the securities loan agreement (the Loan Agreement) between the Client Plan and the Affiliated Borrowers, although the specific terms of the Loan Agreement are negotiated and entered into by the DB Lending Agent and the DB Lending Agent acts as a liaison between the lender and the borrower to facilitate the lending transaction.

(c) The terms of each loan of securities by a Client Plan to the Affiliated Borrowers is at least as favorable to such Client Plans as those of a comparable arm's length transaction between unrelated parties.

(d) A Client Plan may terminate the agency or sub-agency arrangement at any time without penalty to such Client Plan on five business days notice, whereupon the Affiliated Borrowers will deliver securities identical to the borrowed securities (or the equivalent in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the Client Plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery of by the Client Plan and the Affiliated Borrowers, whichever is less.

(e) The Client Plan receives from the Affiliated Borrower (either by physical delivery or by book entry in a securities depository located in the United States, wire transfer or similar means) by the close of business on or before the day the loaned securities are delivered to the Affiliated Borrower, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the DB Lending Agent or an affiliate thereof, or any combination thereof, or other collateral permitted under PTE 81–6, as it may be amended or superseded.

(f) As of the close of business on the preceding business day, the fair market value of the collateral initially equals at least 102 percent of the market value of the loaned securities and, if the market value of the collateral falls below 100 percent, the applicable Affiliated Borrower delivers additional collateral on the following day such that the market value of the collateral is again at least equal to 102 percent.

(g) Prior to entering into the lending program, the Affiliated Borrower furnishes the DB Lending Agent its most recently available audited and unaudited statements, which are, in turn, provided to a Client Plan, as well as a representation by such Affiliated Borrower, that as of each time it borrows securities, there has been no material adverse change in its financial condition since the date of the most recently-furnished statement that has been disclosed to such Client Plan; provided, however, that in the event of a material adverse change, the DB Lending Agent does not make any further loans to such Affiliated Borrower unless an independent fiduciary of the Client Plan is provided notice of any material adverse change and approves the loan in view of the changed financial condition.

(h) In return for lending securities, the Client Plan either—

(1) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan; or

(2) Has the opportunity to derive compensation through the investment of cash collateral. (Under such circumstances, the Client Plan may pay

[1] The Department, herein, is not providing exemptive relief for securities lending transactions engaged in by primary lending agents, other than the DB Lending Agent, beyond that provided pursuant to Prohibited Transaction Exemption (PTE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) and PTE 82–63 (47 FR 14804, April 6, 1982).

a loan rebate or similar fee to an Affiliated Borrower, if such fee is not greater than the fee the Client Plan would pay in a comparable arm's length transaction with an unrelated party.)

(i) All procedures regarding the securities lending activities conform to the applicable provisions of PTE 81–6 and PTE 82–63 as such class exemptions may be amended or superseded as well as to applicable securities laws of the United States or the jurisdiction in which the Foreign Affiliate is domiciled, as appropriate.

(j) The DB Lending Agent or an affiliate which is domiciled in the United States will indemnify and hold harmless each lending Client Plan in the United States against any shortfall in the collateral, as set forth in the applicable Loan Agreement, plus interest and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision) which the Client Plan may incur or suffer directly arising out of the lending of securities of such Client Plan to such Affiliated Borrower, to the extent permitted by law.[2] In the event that an Affiliated Borrower defaults on a loan, the DB Lending Agent will liquidate the loan collateral to purchase identical securities for the Client Plan. If the collateral is insufficient to accomplish such purchase, the DB Lending Agent or the applicable affiliate will indemnify the Client Plan for any shortfall in the collateral, as set forth in the Loan Agreement, plus interest on such amount and any transaction costs incurred (including attorney's fees of the Client Plan arising out of the default on the loans or the failure to indemnify properly under this provision). Alternatively, if such identical securities are not available on the market, the DB Lending Agent or the applicable affiliate will pay the Client Plan cash equal to (1) the market value of the borrowed securities as of the date they should have been returned to the Client Plan, plus (2) all the accrued financial benefits derived from the beneficial ownership of such loaned securities as of such date, plus (3) interest from such date to the date of payment.

(k) The Client Plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities, or other distributions.

(l) The DB Lending Agent provides to Client Plans, prior to any Client Plan's approval of the lending of its securities to an Affiliated Borrower, copies of the notice of proposed exemption (the Notice) and the final exemption.

(m) Each Client Plan receives monthly reports with respect to its securities lending transactions, including, but not limited to, the information described in Representation 31 of the Notice (published on October 22, 1999 at 64 FR 57142, 57150), so that an independent fiduciary of the Client Plan may monitor such transactions with Affiliated Borrowers.

(n) Only Client Plans with total assets having an aggregate market value of at least $50 million are permitted to lend securities to Affiliated Borrowers; provided, however, that—

(1) In the case of two or more Client Plans which are maintained by the same employer, controlled group of corporations or employee organization (i.e., the Related Client Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity is engaged in securities lending arrangements with a DB Lending Agent, the foregoing $50 million requirement shall be deemed satisfied if such trust or other entity has aggregate assets which are in excess of $50 million; provided that if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

(2) In the case of two or more Client Plans which are not maintained by the same employer, controlled group of corporations or employee organization (i.e., the Unrelated Client Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity is engaged in securities lending arrangements with a DB Lending Agent, the foregoing $50 million requirement is satisfied if such trust or other entity has aggregate assets which are in excess of $50 million (excluding the assets of any Client Plan with respect to which the fiduciary responsible for making the investment decision on behalf of such group trust or other entity or any member of the controlled group of corporations including such fiduciary is the employer maintaining such Plan or an employee organization whose members are covered by such Plan). However, the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Has full investment responsibility with respect to plan assets invested therein; and

(ii) Has total assets under its management and control, exclusive of the $50 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $100 million.

In addition, none of the entities described above are formed for the sole purpose of making loans of securities.

(o) With respect to each successive two-week period, on average, at least 50 percent or more of the outstanding dollar value of securities loans negotiated on behalf of Client Plans will be to unrelated borrowers.

(p) In addition to the above, all loans involving a Foreign Affiliate have the following supplemental requirements:

(1) As applicable, such Foreign Affiliate is registered as a broker-dealer or bank with—

(i) The Securities and Futures Authority (the SFA) or the Financial Services Authority (the FSA) in the United Kingdom;

(ii) The Deutsche Bundesbank and/or the Federal Banking Supervisory Authority, i.e., der Bundesaufsichsamt fuer das Kreditwesen (the BAK) or the Bundesaufsichtsamt fur den Wertpapierhandel (the BAWe) in Germany;

(iii) The Ministry of Finance (the MOF) and/or the Tokyo Stock Exchange in Japan;

(iv) The Ontario Securities Commission (the OSC) and/or the Investment Dealers Association (the IDA), or the Office of the Superintendent of Financial Institutions (the OSFI) in Canada;

(v) The Swiss Federal Banking Commission in Switzerland; and (vi) The Australian Prudential Regulation Authority (APRA) or the Australian Securities and Investments Commission (ASIC), and/or the Australian Stock Exchange Limited (ASEL) in Australia.

(2) Such broker-dealer or bank is in compliance with all applicable provisions of Rule 15a-6 (17 CFR 240.15a-6) under the 1934 Act which provides for foreign broker-dealers a limited exemption from United States registration requirements;

(3) All collateral is maintained in United States dollars or dollar-denominated securities or letters of

[2] Where the law prohibits such indemnification by the DB Lending Agent, the Affiliated Borrower will provide the identical indemnification.

credit (unless an applicable exemption provides otherwise);

(4) All collateral is held in the United States (unless an applicable exemption provides otherwise) and the situs of the Securities Loan Agreements are maintained in the United States under an arrangement that complies with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1; and

(5) Each Foreign Affiliate provides the DB Lending Agent a written consent to service of process in the United States and to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the securities lending transaction, which consent provides that process may be served on such borrower by service on the DB Lending Agent.

(q) The DB Lending Agent and its affiliates maintain, or cause to be maintained within the United States for a period of six years from the date of such transaction, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described in paragraph (r)(1) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the DB Lending Agent and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the DB Lending Agent and/or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (r)(1).

(r)(1) Except as provided in subparagraph (r)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (q) are unconditionally available at their customary location during normal business hours by:

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(ii) Any fiduciary of a participating Client Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to any participating Client Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of any participating Client Plan, or any duly authorized representative of such participant or beneficiary.

(r)(2) None of the persons described above in paragraphs (r)(1)(ii)–(r)(1)(iv) of this paragraph (r)(1) are authorized to examine the trade secrets of the DB Lending Agent or commercial or financial information which is privileged or confidential.

III. Definitions

For purposes of this exemption,

(a) The term ''affiliate'' means any entity now or in the future, directly or indirectly controlling, controlled by or under common control with BT, DB or their successors.

(b) The term ''Affiliated Borrower'' means an affiliate of BT or DB that is a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Advisers Act), that is supervised by the United States or a State, or a broker-dealer registered under the 1934 Act, or any Foreign Affiliate.

(c) The term ''Foreign Affiliate'' means an affiliate of BT or DB that is a broker-dealer or bank that is supervised by (1) the SFA or the FSA in the United Kingdom; (2) the Deutsche Bundesbank and/or the BAK, or the BAWe in Germany; (3) the MOF and/or the Tokyo Stock Exchange in Japan; (4) the OSC, the IDA and/or OSFI in Canada; (5) the Swiss Federal Banking Commission in Switzerland; and (6) APRA, ASIC and/or ASEL in Australia.

EFFECTIVE DATE: This exemption is effective as of April 9, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on October 22, 1999 at 64 FR 57142.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 30th day of December, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–220 Filed 1–4–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: January 11, 2000, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 770, Arlington, VA 22230.

Type Of Meeting: Closed.

Contact Person: Dr. S. Chic Liu, Program Director, Information Technology and Infrastructure Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230. (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate nominations for the FY'00 Infrastructure Systems Panel—Unsolicited Proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 29, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–129 Filed 1–4–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date/Time: January 24, 2000, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Anthony Maddox, CISE Postdoctoral Research Associates, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Postdoctoral Research Associates proposals submitted in response to the program announcement (NSF 97–169).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 29, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–128 Filed 1–4–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: February 14–16, 2000; 8:30 a.m. until 5 p.m.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Dimitry Khavinson, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1994.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Dynamical Systems/ET Panel Meeting, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 27, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–127 Filed 1–4–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Application for License to Export Nuclear Equipment and Material.

3. *The form number if applicable:* NRC Form 7.

4. *How often the collection is required:* On occasion; for each separate request for a specific export license and for exports of incidental radioactive material using existing general licenses.

5. *Who will be required or asked to report:* Any person in the U.S. who wishes to export: (a) Nuclear material and equipment subject to the requirements of a specific license; (b) radioactive waste subject to the requirements of a specific license; and (c) incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

6. *An estimate of the number of responses:* 63.

7. *The estimated number of annual respondents:* 63.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 150 hours (2.4 hours per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Any person in the U.S. wishing to export nuclear material and equipment requiring a specific authorization or radioactive waste requiring a specific authorization ordinarily should file an application for a license on NRC Form 7, except that certain submittals should be filed by letter. The application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

A completed NRC Form 7 must also be filed by any person in the U.S. wishing to use existing NRC general licenses for the export of incidental radioactive material before the export takes place (if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms). The form is reviewed by the NRC to ensure that the NRC is informed before the fact of these kinds of shipments and to allow NRC to inform other interested parties, as appropriate, including import control authorities in interested foreign countries.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. OMB clearance

requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/Public/OMB/index.html). The document will be available on the bulletin board for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by February 4, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0027), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 22nd day of December 1999.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–206 Filed 1–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Decommissioning Criteria for the West Valley Demonstration Project (M–32) and the West Valley Site; Revised motice of public meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised notice of public meeting.

SUMMARY: On December 3, 1999, the U.S. Nuclear Regulatory Commission (NRC) published in the **Federal Register** a draft Policy Statement on the criteria to be used for decommissioning the West Valley Demonstration Project and West Valley Site and an announcement of a public meeting on the Policy Statement. The time scheduled for that public meeting has been lengthened from two to three hours. Therefore, NRC will conduct a public meeting at the Ashford Office Complex, 9030 Route 219, West Valley, New York, conference room C1, on January 5, 2000, from 7:00–10:00 p.m. to discuss the draft policy statement for the decommissioning criteria for West Valley with interested members of the public.

The NRC requested that comments on the draft Policy Statement be submitted by February 1, 2000. The purpose of the meeting, which will be transcribed, is to provide information to the public on the policy statement and the NRC's regulatory responsibilities and to engage in a discussion with the public on questions and concerns related to NRC responsibilities. The discussion will also facilitate the preparation of any written comments on the policy statement and give the public an opportunity to provide oral comments. In the discussions, NRC staff will be interested in hearing views on issues such as: Institutional Controls/Engineered Barriers; Incidental Waste; Partial Site Release; Fulfillment of NRC's National Environmental Policy Act responsibility, and any other issues related to the NRC's role at West Valley that the public may be interested in. Although the focus of the meeting will be on a discussion with the public on West Valley issues, some time will be reserved for those wishing to read a brief formal statement.

FOR FURTHER INFORMATION CONTACT: Questions with respect to this action should be referred to Jack D. Parrott, Project Scientist, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, Mail Stop T–8F37, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone: (301) 415–6700; e-mail: jdp1@nrc.gov.

Dated at Rockville, Maryland, this 29th day of December 1999.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–207 Filed 1–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 3, 10, 17, and 24, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 3

Wednesday, January 5

9:55 a.m. Affirmation Session (Public Meeting) (if needed)

Week of January 10—Tentative

Monday, January 10

10:00 a.m. Meeting with D.C. Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

Tuesday, January 11

9:30 a.m. Briefing on Status of Research Programs, Performance, and Plans (including Status of Thermo-Hydraulics) (Public Meeting) (Contact: Jocelyn Mitchell, 301–415–5289)

Wednesday, January 12

9:55 a.m. Affirmation Session (Public Meeting) (if needed)

10:00 a.m. Briefing on Status of NRR Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1134)

Week of January 17—Tentative

Wednesday, January 19

8:30 a.m. Discussion of Intragovernmental Issues (Closed-Ex. 9)

9:30 a.m. Discussion of Management Issues (Closed-Ex. 2 & 6)

Thursday, January 20

9:55 a.m. Affirmation Session (Public Meeting) (if needed)

10:00 a.m. Briefing on status of CIO Programs, Performance, and Plans (Public Meeting) (Contact: Donnie Grimsley, 301–415–8702)

Friday, January 21

10:00 a.m. Briefing on Native American, State of Nevada, and Affected Units of Local Governments Representatives Responses to DOE's Draft Environmental Impact Statement (EIS) for a Proposed HLW Geologic Repository (Public Meeting)

Week of January 24—Tentative

Tuesday, January 25

9:00 a.m. Briefing on NRC Staff's Response to DOE's Draft Environmental Impact Statement (EIS) for a Proposed HLW Geologic Repository (Public Meeting)

Wednesday, January 26

9:25 a.m. Affirmation Session (Public Meeting)

9:30 a.m. Briefing on Draft 50.59 Regulatory Guide (Public Meeting)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like

to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 30, 1999.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 00–250 Filed 1–3–00; 11:28 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 30–2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for clearance of a revised information collection. RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits.

We estimate 21,000 RI 30–2 forms are completed annually. The RI 30–2 takes approximately 35 minutes to complete for an estimated annual burden of 12,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before February 4, 2000.

ADDRESSES: Send or deliver comments to—William C. Jackson, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2336, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Budget & Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–210 Filed 1–4–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request; Extension of Standard Form 113–A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995) this notice announces a request submitted to the Office of Management and Budget (OMB) for renewal of authority to collect data for the Monthly Report of Federal Civilian Employment (SF 113–A). The information that is collected provides a timely count of Governmentwide employment, payroll, and turnover data. Uses of the data include monthly reporting to OMB and publishing the bimonthly *Federal Civilian Workforce Statistics—Employment and Trends;* answering data requests from the Congress, White House, other Federal agencies, the media, and the public; providing employment counts required by OMB; and serving as benchmark data for quality control of the Central Personnel Data File. The number of responding agencies is 130. The report is submitted 12 times a year. The total number of person-hours required to prepare and transmit the reports annually is estimated at 3,120. The Office of Personnel Management published a preliminary notice of its intention to submit this request to OMB in the September 2, 1999 **Federal Register** at page 48212. No comments were received as a result of this notification.

For copies of the clearance package, call Mary Beth Smith-Toomey, Reports and Forms Officer, on (202) 606–8358, or by e-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before February 4, 2000.

ADDRESSES: Send or deliver comments to:

May Eng, U.S. Office of Personnel Management, Room 7439, 1900 E Street, NW, Washington, DC 20415.

And

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684, U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–211 Filed 1–4–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 13, 2000
Thursday, January 27, 2000
Thursday, February 3, 2000

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C.

552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated December 22, 1999.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 00–213 Filed 1–4–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend a system of records.

SUMMARY: OPM proposes to amend the Parking Program Records, OPM/Internal-13, a system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This revision is being published in accordance with 5 U.S.C. 552a(3)(4).

DATES: The changes will be effective without further notice February 14, 2000, unless comments are received that would result in further revisions.

ADDRESSES: Send written comments to the Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: This notice serves to update OPM/Internal-13, Parking Program Records, to collect medical information from a person seeking a disability parking permit and to disclose the medical information to OPM's Medical Doctor for approving parking based on a person's disability.

U. S. Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/INTERNAL–13

SYSTEM NAME:

Parking Program Records.

SYSTEM LOCATION:

U.S. Office of Personnel Management, Office of Contracting and Administrative Services, 1900 E Street NW., Washington, DC 20415–7100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current OPM employees and others who use OPM parking facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to the administration of the parking permit system for OPM's central office at the Theodore Roosevelt Office Building, 1900 E Street NW., Washington, DC. The records include information such as name; Social Security Number; employing organization; assigned permit number; home and office telephone numbers; home address; vehicle information; duty hours and location; and medical information when necessary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Includes the following with any revisions or amendments:

Federal Property and Administrative Services Act of 1949, as amended, and 5 U.S.C. 301.

PURPOSE(S):

The records are used to administer the parking program at OPM, collect information for tax purposes, and compare records with other Federal agencies to ensure parking privileges are not abused. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1, 3 through 7, and 11, of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within the system. The routine uses listed below are specific to this system of records only.

a. To disclose information to the Internal Revenue Service and State and local tax authorities.

b. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

c. To disclose information in computer matching activities, including comparison of parking records with other Federal agencies, and for the purpose of assigning tax liabilities related to the fringe benefit accrual value of parking.

d. To disclose information to OPM's Medical Doctor for approving parking based on a person's disability.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in an automated data base.

RETRIEVABILITY:

These records are retrieved by the names, Social Security Numbers, permit numbers, addresses, or vehicle information of the individuals on whom they are maintained.

SAFEGUARDS:

Access is only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, in accordance with NARA General Records Schedules 2 (pay) and 11 (parking permits). Disposal of manual records is by shredding or burning; electronic data is erased.

SYSTEM MANAGER(S) AND ADDRESS:

Facility Services Division, Security Office, Office of Contracting and Administrative Services, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–7100.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information on them should contact the system manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Parking permit number (if appropriate).

c. Vehicle license number (if appropriate).

d. Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Parking permit number (if appropriate).

c. Vehicle license number (if appropriate).

d. Social Security Number.

Individuals requesting access must also follow the OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them should contact the system manager. Individuals must furnish the following for their records to be located and identified:

a. Full name.

b. Parking permit number (if appropriate).

c. Vehicle license number (if appropriate).

d. Social Security Number.

Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individuals to whom the records pertain.

b. Information taken from official OPM records.

c. Other Federal agency parking records.

d. OPM Medical Doctors when disability determinations are requested.

[FR Doc. 00–212 Filed 1–4–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42279; File No. SR–GSCC–99–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Formation of and Involvement in the European Securities Clearing Corporation

December 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1999, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks the Commission's approval for GSCC to become an initial shareholder and serve on the Board of Directors of the European Securities Clearing Corporation (''ESCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In 1998, GSCC was requested by its board of directors, which is composed of representatives of many organizations active in the government debt securities cash and repo markets both in the United States and in Europe, to explore the possibility of providing in Europe the types of comparison, netting, and risk management services that GSCC provides in the United States. GSCC originally planned to provide these services through a joint venture with the Euroclear Clearance System Societe Cooperative (''Euroclear'') [3] and its operator, Morgan Guaranty Trust Company of New York, Brussels Branch (''Morgan'').[4] Specifically, GSCC and Euroclear had planned to use J.P. Morgan Benelux, S.A. (''Benelux''), an existing Morgan subsidiary, as the netting vehicle. Benelux would have been renamed the European Securities Clearing Corporation.[5] The London Clearing House (''LCH'') was also asked by its members to provide these same services in Europe.[6] In response, LCH began offering its RepoClear service in August 1999 through which LCH provides netting services for European sovereign debt repo transactions.

GSCC, Euroclear, and LCH (collectively, the ''parties'' and, each individually, a ''party'') have determined that it would be more efficient to provide the services for European sovereign debt buy-sell and repo transactions through a single netting vehicle, which will be LCH through its RepoClear service.[7] This plan allows for a logical consolidation of the efforts of the three parties and maximizes the synergies to be achieved by them. Each of the parties brings its unique knowledge and experience to the effort. GSCC has extensive netting and risk management expertise as the leading provider of these services for the buy-sell and repo markets in the United States. Euroclear has over thirty years experience providing settlement, custody, and collateral management services in Europe. As mentioned above, LCH provides clearing and netting services for a wide array of financial products, including repos. The parties also share a large common membership (mostly through affiliated entities).

The parties will form a new entity, ESCC, which is proposed to be a United Kingdom company and whose purpose will be oversee the scope and nature of the netting services offered by LCH. Thus, there will be a transition of control of LCH's RepoClear service from LCH to ESCC. ESCC will be owned equally by the three parties. It is intended that ESCC be governed by its market participant users, who are expected to be major participants in the European fixed-income marketplace.

GSCC's involvement in ESCC at the outset will be a governance role that should help ensure, among other things, that LCH/RepoClear will draw upon GSCC's experience and knowledge and

[1] 15 U.S.C.. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] Euroclear was created in 1968 to provide clearance and settlement for internationally traded securities. It provides related services such as custody, securities lending, and money transfer. Euroclear has extensive experience in European securities settlement.

[4] Morgan and Euroclear recently announced that they have signed a letter of intent to create a new, market-owned European bank to succeed Morgan as operator and banker of Euroclear. The transition from Morgan to the new bank operator is expected to occur within approximately twenty months.

[5] It was intended that GSCC would acquire a minority ownership interest in Benelux.

[6] LCH was created in 1888 to clear certain commodities transactions. It currently provides clearing and netting services for a wide array of financial products, including futures, equities, swaps, and repos. LCH is a ''recognized clearing house'' under the United Kingdom's Financial Services Act of 1986.

[7] It should be noted that there is at least one other competing netting vehicle in Europe, ClearNet, which is owned by the ParisBourse. LCH to ESCC. ESCC will be owned equally by the three parties. It is intended that ESCC be governed by its market participant users, who are expected to be major participants in the European fixed-income marketplace.

carry United States-style features, such as single-ticket data input, settlement of contracts at current market value, the facilitation of substitutions, and the admission of inter-dealer brokers. These features have proven very successful of the U.S. Government debt market in the United States.

GSCC's management role in ESCC will further ensure that the RepoClear service will use, to the extent appropriate, GSCC's mark-to-market and margining methodologies to provide comprehensive, uniform risk management processes. GSCC intends to help ensure that: (i) Processing efficiencies will be attained through the utilization of standardized SWIFT message formats for input and output; (ii) participants' margin requirements will be reduced through cross-margining both their European Government securities activity and their combined United States and European activity;[8] (iii) participants' balance sheets will be reduced and they will experience increased capital utilization through a maximization of the offsets available from repo and reverse repo activity; and (iv) the RepoClear service will support global electronic trading systems, allowing for more efficient settlement of cash and futures activities engaged in side-by-side through coordinated mark-to-market and margining processes and standardized clearance and settlement practices and through optimized cross-margining of correlated positions.

GSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder applicable to GSCC because it should help to ensure that United States organizations operating abroad either directly or through their European affiliates obtain the significant netting, risk management, and other services and associated benefits that GSCC provides in the United States.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on completion.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–99–05 and should be submitted by January 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–112 Filed 1–4–00; 8:45 am]

BILLING CODE 8010–01–M

[8] The proposed cross-margining arrangement will be the subject of a separate rule filing in the future. The parties intend to work towards implementing the cross-margining arrangement by early 2001.

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3193]

Bureau of Educational and Cultural Affairs; Bosnia and Herzegovina Undergraduate Development Program; Notice: Request for Proposals

Summary

The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Bosnia and Herzegovina Undergraduate Development Program. Four-year colleges and universities meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to host between two and five Bosnian students in a one-year, non-degree undergraduate program for the academic year 2000–2001. Organizations with less than four years of experience in hosting international exchange students are not eligible for this competition. Recruitment and selection will be conducted by the U.S. Embassy Office of Public Affairs, Sarajevo, Bosnia and Herzegovina.

Program Information

The Bosnia and Herzegovina Undergraduate Development Program is designed to allow Bosnian students an opportunity to obtain knowledge, insight and cultural enrichment through their academic studies at American colleges and universities. ECA strongly encourages institutions to guide students to courses in American studies, or other courses which emphasize democracy, market economy, and civic society per the intent of the Support for Eastern European Democracy (SEED) Act funding. ECA is holding an open competition for four-year universities and colleges giving preference to those that meet the following criteria:

- Has demonstrated experience in hosting Bosnian (or Balkan regional) students, partnerships with Bosnian higher education institutions, or expertise and interest in the region
- Strong international student advising offices with experience dealing with cultural, educational and adjustment issues for foreign students
- Accessibility to and opportunities for cultural and social activities on- and off-campus with access to public transportation
- Mid-size institutions (generally between 5,000-15,000 enrollement) that offer all or most of the eligible fields of study for this program
- Diverse student populations with substantial foreign student representation

• Substantial cost-sharing toward tuition, fees, room and board expenses, other direct participant expenses, and administrative expenses

• Subject to the availability of funds, the Bureau of Educational and Cultural Affairs (ECA) expects to make up to four awards for the administration of the Bosnia and Herzegovina Undergraduate Development Program for the 2000–2001 academic year. The duration of the grants will be August 1, 2000 through July 15, 2001 and programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

The proposed funding will support one academic year of study in the fields of agriculture, American studies, business administration, criminal justice, economics, education, environmental resource management, journalism/mass communications, political science, and public administration. The academic-year program will be followed by a four-to-twelve week internship in the students' field of specialization. The program will also include a mid-year workshop to be hosted by one of the grantee institutions, and an end-of-year workshop in Washington, DC.

Budget Guidelines

Organizations with less than four years of experience in hosting international exchange students are not eligible for this competition .

Applicants must submit a comprehensive budget for the entire program based on the specific guidelines listed in the Solicitation Package. Per participant costs should be below $25,000 in order to be competitive. 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. Please note that indirect rates are considered part of the administrative costs and should be kept to a minimum or cost-shared as possible.

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 following code ECA/A/E/EUR–00–06.

For Further Information

Please contact the Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, ECA/A/E/EUR, SA–44, Room 246, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, (202) 205–0525, fax (202) 260–7985, E-Mail: sgovatsk@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 Manager Sondra Govatski 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 Tuesday, February 22, 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 and nine copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–00–06, Program Management, ECA/EX/PM, SA–44 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 U.S. Embassy, Sarajevo, 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 USIA. 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 of Educational and Cultural Affairs 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

Affairs section overseas, where appropriate. Eligible proposals will be forwarded to panels of Department of State officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other elements of the Department. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public 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. International Student and Academic Support: Proposals should describe support services provided by the institution and department/school for international students including monitoring and evaluation of students and program.
2. Ability to Provide Cultural Enrichment and Community Outreach Opportunities: Proposals should demonstrate a commitment to planning, implementing, and supporting the Bosnian students in participating in cultural, social, and community outreach opportunities.
3. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of both geographic and ethnic diversity.
4. Institution's Record/Ability: Proposals should demonstrate an institutional record of strong academic programs and successful exchange programs. This includes responsible fiscal management and full compliance with all reporting requirements for past ECA (formerly USIA) grants as determined by ECA's Office of Contracts. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.
5. Cost Effectiveness: Proposals should indicate a high level of cost sharing and a competitive level of cost per individual student for the ECA.

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 Bosnia and Herzegovina Undergraduate Development Program is provided through the Support for East European Democracy (SEED) Act of 1989. The SEED Act targets assistance funds to advance the democratic and economic transition of Central and Eastern Europe. Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. ECA projects and programs are subject to the availability of funds.

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 28, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–183 Filed 1–4–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3194]

Bureau of Educational and Cultural Affairs; Summer Institute for EFL Administrators From Francophone and Lusophone Sub-Saharan Africa

ACTION: Notice—Request for proposals.

SUMMARY: The African Programs Branch of the Office of Academic Exchange Programs of the U.S. Department of State's Bureau of Educational and Cultural Affairs (hereafter referred to as the Bureau) announces an open competition for an assistance award. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a Summer Institute for English-as-a-Foreign-Language (EFL) Administrators from Francophone and Lusophone Sub-Saharan Africa. The Summer Institute will provide a six-week program in education management for 16 secondary school EFL supervisors/inspectors and school administrators with strong EFL backgrounds selected from French and Portuguese-speaking countries of Sub-Saharan Africa. (Note: The actual number may be slightly higher with the inclusion of one or two participants from Haiti.)

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 cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with the Bureau concerning this announcement should refer to the above title and reference number ECA/A/E/AF–00–01.

Deadline for Proposals: All proposal copies must be received by the Bureau by 5 p.m. Washington, D.C. time on February 11, 2000. Faxed documents will not be accepted, nor will documents postmarked February 11, 2000, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

The Summer Institute for EFL Administrators should be programmed to encompass about 45 days and should begin and end between June 1, 2000, and August 31, 2000, depending on the host institution's academic calendar. No funds may be expended until a grant agreement is signed with the Bureau's Grants Division.

FOR FURTHER INFORMATION CONTACT: Carol Herrera, Program Officer, phone: 202–619–5405, fax: 202–619–6137, or e-mail: cherrera@usia.gov, Office of Academic Exchange Programs, African Programs Branch, Room 232, Bureau of Educational and Cultural Affairs, U.S. Department of State SA–44, 301 4th Street, S.W., Washington, D.C. 20547.

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 the information provided before downloading. Please specify Program Officer Carol Herrera on all inquiries and correspondence. Interested applicants should 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 in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and seven (7) copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/AF–00–01, Program Management Staff, ECA/EX/PM, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity 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.

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.

SUPPLEMENTARY INFORMATION:

Program overview

The Bureau of Educational and Cultural Affairs of the United States Department of State solicits proposals for a Summer Institute for English-as-a-Foreign-Language (EFL) Administrators from Francophone and Lusophone Sub-Saharan Africa. The Summer Institute will provide a six-week academic program incorporating a U.S. cultural and educational experience, for 16 supervisors/inspectors/administrators of secondary schools from French and Portuguese-speaking countries of Sub-Saharan Africa. The actual number may be slightly higher with the inclusion of one or two participants from Haiti. Subject to availability of funds, one grant will be awarded to conduct the 2000 Institute.

The Bureau asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the fields of education administration and EFL. Special expertise in handling cross-cultural programs and experience with educational systems in Sub-Saharan Africa and African education administrators are also required. Note: Applicant organizations should demonstrate a proven record (at least four years) of experience in international exchange.

The general objective of the Institute is to support and encourage the upgrading of English language programs in secondary schools in French and Portuguese-speaking African countries through enhancing participants' management and organizational skills and broadening their understanding of U.S. institutions and culture.

Guidelines

The proposal should be designed to support the following specific activities:

(a) A five-week academic program with emphasis on developing the capacities of supervisors/inspectors/administrators to strengthen EFL programs through more effective management of teachers, students, and resources. Detailed academic objectives are set forth in the Solicitation Package.

(b) Cultural activities facilitating interaction among the African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of African countries, planned within the five-week academic program.

(c) A one-week, escorted, cultural and educational tour of Washington, D.C., complementing and reinforcing the academic material.

(d) Follow-on communication among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.

(e) Assistance to participants to select, purchase and ship professional materials to use in follow-on activities and training projects in their home countries.

Participants will be selected by the Bureau, based on nominations from U.S. Embassies. Minimum qualifications for all participants will be (1) adequate proficiency in English to be able to participate in and benefit from the program, (2) the equivalent of BA/BS degrees from their national education systems, and (3) job responsibilities related to school/program administration. Participants will enter the United States on J-visas, using IAP–66 forms issued by U.S. Embassies in the home country.

The U.S. institution should plan to conduct an initial needs assessment of participants and should be prepared to adjust program emphasis as necessary to respond to participants' concerns for EFL education. Specific areas to address in the five-week academic program follow:

1. Managing the teaching staff: Evaluating, supporting, motivating teachers; designing and conducting in-service training programs; promoting professional ethics; building staff cohesiveness.

2. Student development: Setting behavioral/learning standards, evaluating student progress, creating a school culture conducive to learning, fostering parental involvement.

3. Managing resources: Conducting resource inventories, allocating/tracking resources, budgeting, optimizing limited resources, developing access to outside resources.

4. Introduction to Internet (WWW and e-mail) for professional networking and development. Few participants will have visited the United States previously. In view of this, an initial orientation to the host institution

community and an introduction to U.S. society and system of education should be considered an integral part of the Institute.

Management of the academic program, the cultural tour and on-site arrangements will be the responsibility of the Institute grantee. The host institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. The Bureau will arrange participants' international travel. The Bureau will provide the host institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute.

Proposed Budget

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate The Bureau decisions on funding. The cost to the Bureau for the Summer Institute for EFL Administrators from Francophone and Lusophone Africa should not exceed $100,000 based on 16 participants. Funding level will be adjusted at a later date to accommodate inclusion of 1–2 additional participants from Haiti. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Allowable costs for the program include the following:

(1) Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

(2) Lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

(4) Administrative costs as necessary.

Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

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 Under Secretary for Public Diplomacy and Public 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: Proposal should exhibit quality, rigor, and appropriateness of proposed syllabus to the academic objectives of the Institute. Proposal should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants.

2. Program planning: Relevant work plan and detailed calendar should demonstrate substantive undertakings and logistical capacity. Plan and calendar should adhere to the program overview and guidelines described above.

3. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with African participants. Proposal should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.

4. Area Expertise: Proposals should demonstrate institutional experience in and knowledge of Africa (Francophone and Lusophone) as well as expertise in education in developing countries.

5. Multiplier effect/impact: Proposed program should contribute to long-term, mutual understanding and sharing of information about Africa among Americans, as well as to the understanding and knowledge of the U.S. among the African participants.

6. Support of Diversity: Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Program administrators should strive for diversity among Institute staff, university students, and the host community who interact with participants.

7. Ability to achieve program objectives: Teaching objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

8. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by the Bureau's Grants Division. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

9. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) which ensures that Bureau supported programs are not isolated events.

10. Project Evaluation: Proposals should include a plan to evaluate the Summer Institute's success, both as the activities unfold and at the end of the program.

11. Cost-effectiveness: 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.

12. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

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 20, 1999.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–184 Filed 1–4–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION
Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending December 24, 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–99–6694.

Date Filed: December 21, 1999.

Parties: Members of the International Air Transport Association.

Subject:

PSC/Reso/101 dated November 17, 1999

Expedited Resos and Recommended Practices r1–11

Intended effective date: as early as December 31, 1999.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 00–160 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Providence-T.F. Green Airport, Warwick, RI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Providence-T.F. Green Airport, as submitted by the Rhode Island Airport Corporation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Providence-T.F. Green Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 19, 2000.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is December 22, 1999. The public comment period ends on March 7, 2000.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 10803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Providence-T.F. Green Airport is in compliance with applicable requirements of part 150, effective December 22, 1999. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 19, 2000. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts non compatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The Rhode Island Airport Corporation submitted to the FAA, on November 4, 1999, a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (Part 150) study at Providence-T.F. Green Airport from March 1998 to November 1999. It was requested that the FAA review this material as the noise exposure map, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by Rhode Island Airport Corporation. The specific maps under consideration were Exhibits 1–1, ''1998 Existing NEM,'' and Exhibit 1–3, ''2003 NCP/NEM'', along with the supporting documentation in ''FAR Part 150 Noise Compatibility Study Update.'' The FAA has determined that the maps for Providence-T.F. Green Airport are in compliance with applicable requirements. This determination is effective on December 22, 1999.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Providence-T.F. Green Airport, also effective on December 22, 1999. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise

compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 19, 2000. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Rhode Island Airport Corporation, T.F. Green Airport, 2000 Post Road, Warwick, Rhode Island 02886–1533

Federal Aviation Administration, New England Region, Airports Division, ANE–600, 16 New England Executive Park, Burlington, Massachusetts 01803

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on December 22, 1999.

Bradley A. Davis,

Acting Manager, Airports Division.

[FR Doc. 00–155 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Special Committee 135; Environmental Conditions and Test Procedures for Airborne Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–135 meeting to be held January 16–19, 2000, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: January 17, (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) Review Section 8 Proposed Changes; (4) Review Section 16 Proposed Changes; (5) Review Status of Section 20 Working Group; (6) Review milestone schedule for release of revisions to DOD–160D; (7) Other Business; (8) Confirm dates for future meetings; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1999.

Gregory D. Burke,

Designated Official.

[FR Doc. 00–156 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/EUROCAE Working Group 53; Air Traffic Services; Safety and Interoperability Requirements

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee (SC)–189/EUROCAE Working Group (WG)–53 meeting to be held January 31–February 4, 2000, starting at 9:00 a.m. The meeting will be held at EUROCAE, 17 rue Hamelin, Paris, France 16.

The agenda will be as follows: Monday, January 31: Opening Plenary Session Convenes at 9:00 a.m.: (1) Introductory Remarks; (2) Review and Approve Agenda; (3) Review and Approve Summary of the Previous Meeting; (4) Sub-Group and Related Reports; (5) Position Papers Planned for Plenary Agreement; (6) SC–189/WG–53 Co-chair Progress Report. Tuesday, February 1 through Thursday, February 3: (7) Sub-group Meetings. Friday, February 4: Closing Plenary Session: (8) Introductory Remarks; (9) Review and Approval of Agenda; (10) Review of Preliminary Meeting Minutes; (11) Sub-group and Related Reports; (12) Position Papers Planned for Plenary Agreement; (13) SC–189/WG–53 Co-chair Progress Report and (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, by phone at (202) 833–9339, by fax at (202) 833–9434, or by e-mail at hmoses@rtca.org. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1999.

Gregory D. Burke,

Designated Official.

[FR Doc. 00–157 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Joint RTCA Special Committee 181/EUROCAE Working Group 13 Standards of Navigation Performance

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint Special Committee 181/EUROCAE Working Group meeting to be held January 17–22, 2000, starting at 9:00 a.m. The meeting will be held at the Honeywell, Inc. Commercial Aviation Systems, 21111 North 19th Ave, Phoenix, AZ 85036. The host, Mr. David Dwyer, may be reached at (602) 436–7268 (phone), *dave.dwyer@cas.honeywell.com* (email).

The agenda will be as follows: January 17–18, 9:00 a.m.–5:00 p.m. (1) Working Groups 1 and 4 to meet separately; January 19, 9:00 a.m.–noon, (2) Plenary Final Review DO–236A; January 20, 9:00 a.m.–noon, (3) Plenary Final Review DO–236A, 1:00 p.m.–5:00 p.m., (4) Final Review Moving Maps MOPS; January 21, 9:00 a.m.–noon (6) Plenary Final Review Moving Map MOPS; (7) Chairman's Remarks; (8) Working Group Reports; (9) Plenary Review DO–236A and Moving Maps MOPS; (10) Confirm dates of future meetings; (11) Other Business; (12) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may

present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1999.

Gregory D. Burke,

Designated Official.

[FR Doc. 00–158 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, Florida

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 impose and use the revenue from a PFC at Melbourne International 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 February 4, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Executive Director of Melbourne International Airport at the following address: Melbourne International Airport, One Air Terminal Parkway, Suite 220, Melbourne, Florida 32901–1888.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Melbourne International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Armando L. Rovira, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331 X 31. 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 Melbourne International 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, December 27, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Melbourne International Airport 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 April 19, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–C–00–MLB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2000.

Total estimated PFC revenue: $831,194.

Brief description of proposed project(s): Improve, Renovate Terminal Building-Phase 1—Reroofing; Acquire Security Improvements & Police Vehicle; Runway 9L Safety Area Wetland Mitigation Phase 2; Improve, Renovate Terminal Building-Phase 2 Wall and Skylight Repair; Acquire Airport News and Training Network System; Acquire ARFF Vehicle and Three Proximity Suits; Improve, Renovate Terminal Building-Phase 3 Restroom Renovation; Acquire Aircraft Loading Bridge.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator.

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 Melbourne International Airport.

Issued in Orlando, Florida on December 27, 1999.

John W. Reynolds, Jr.,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–159 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Harris and Montgomery Counties, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environment impact statement will be prepared for a proposed transportation improvement project in Harris and Montgomery Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Mack, P.E., Federal Highway Administration, Texas Division, 826 Federal Bldg., 300 East 8th Street, Austin, Texas 78701, Telephone 512–916–5516.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and The Grand Parkway Association, will prepare an environmental impact statement (EIS) on a proposal to upgrade the existing road network in Harris and Montgomery Counties. The proposed improvements being considered, as shown in the Region's Long-Range Transportation Plan, are a multilane controlled access facility in northern Harris and Montgomery Counties which would be part of a third circumferential loop (State Highway 99) around Houston. The proposed improvement length is approximately 13 miles. Improvements in this area are necessary to provide mobility to the growing area of northwest Harris and Montgomery Counties. A Draft EIS will evaluate various transportation alternatives between Interstate 45 (North) and United States Highway 59 (North). The majority of this corridor crosses relatively undeveloped properties in Harris and Montgomery Counties, although subdivision has occurred in portions. Among the alternatives to be studied are the ''No-action'' alternative, Transportation System Management (TSM) alternative, Mass Transit alternative and Roadway Build alternative. Cities and towns in this region include Spring, New Caney and Porter. This study is authorized pursuant to the Texas Transportation Commission Minute Order No. 108744 issued May 27, 1999.

The scoring meeting will be on February 3, 2000, at Kingwood College, 20000 Kingwood Drive from 4 p.m. to 7 p.m. Large scale maps with environmental and social features will be available at the meeting, and several

corridors will be shown on these maps. These maps and corridors will reflect input from public workshops held in August 1999. The scoping process will continue throughout the development of the environmental document.

Impacts caused by the construction and operation of the facility will vary according to the transportation alternative utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation route improvement), air and noise impacts from construction equipment and operation of the facility, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right of way encroachment, and impacts to residents and businesses based on potential displacements.

Letters describing the proposed action soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Environmental Impact Statement should be directed to the FHWA at the address provided above.

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

Issued on December 23, 1999.

Wilbur Lee Gibbons,

P.E., Urban Program Engineer, Austin, Texas.

[FR Doc. 00–200 Filed 01–04–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Harris County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environment impact statement will be prepared for a proposed transportation improvement project in Harris County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Mack, P.E., Federal Highway Administration, Texas Division, 826 Federal Bldg., 300 East 8th Street, Austin, Texas 78701, Telephone 512–916–5516.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and The Grand Parkway Association, will prepare an environmental impact statement (EIS) on a proposal to upgrade the existing road network in Harris County. The proposed improvements being considered, as shown in the Region's Long-Range Transportation Plan, are a multilane controlled access facility in northern Harris County which would be part of a third circumferential loop (State Highway 99) around Houston. The proposed improvement length is approximately 13 miles. Improvements in this area are necessary to provide mobility to the growing area of northwest Harris County.

A Draft EIS will evaluate various transportation alternatives between State Highway 249 near Tomball and Interstate Highway 45 (North) near the northern terminus of the Hardy Toll Road. The majority of this corridor crosses relatively undeveloped properties in Harris County. Among the alternatives to be studied are the ''No-action'' alternative, Transportation System Management (TSM) alternative, Mass Transit alternative and Roadway Build alternative. Cities and towns in this region include Tomball and Spring. This study is authorized pursuant to the Texas Transportation Commission Minute Order No. 108744 issued May 27, 1999.

The scoping meeting will be on February 2, 2000, at Tomball College, 30555 Tomball Parkway (SH 249) from 4 p.m. to 7 p.m. Large scale maps with environmental and social features will be available at the meeting, and several corridors will be shown on these maps. These maps and corridors will reflect input from public workshops held in August 1999. The scoping process will continue throughout the development of the environmental document.

Impacts caused by the construction and operation of the facility will vary according to the transportation alternative utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation route improvement), air and noise impacts from construction equipment and operation of the facility, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right of way encroachment, and impacts to residents and businesses based on potential displacements.

Letters describing the proposed action soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Environmental Impact Statement should be directed to the FHWA at the address provided above.

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

Issued on: December 23, 1999.

Wilbur Lee Gibbons,

Urban Program Engineer, Austin, Texas.

[FR Doc. 00–198 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Harris County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation improvement project in Harris County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Mack, P.E., Federal Highway Administration, Texas Division, 826 Federal Bldg., 300 East 8th Street, Austin, Texas 78701, Telephone: 512–916–5516.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and The Grand Parkway Association, will prepare an environmental impact statement (EIS) on a proposal to upgrade the existing road network in Harris County. The proposed improvements being considered, as shown in the

Region's Long-Range Transportation Plan, are a multilane controlled access facility in northern Harris County which would be part of a third circumferential loop (State Highway 99) around Houston. The proposed improvement length is approximately 13 miles. Improvements in this area are necessary to provide mobility to the growing area of northwest Harris County.

A Draft EIS will evaluate various transportation alternatives between State Highway 290 and State Highway 249 near Tomball. The majority of this corridor crosses relatively undeveloped properties in Harris County. Among the alternatives to be studied are the ''No-action'' alternative, Transportation System Management (TSM) alternative, Mass Transit alternative and Roadway Build alternative. Cities and towns in this region include Hockley and Tomball. This study is authorized pursuant to the Texas Transportation Commission Minute Order No. 108744 issued May 27, 1999.

The scoping meeting will be on February 2, 2000, at Tomball College, 30555 Tomball Parkway (SH 249) from 4 p.m. to 7 p.m. Large scale maps with environmental and social features will be available at the meeting, and several corridors will be shown on these maps. These maps and corridors will reflect input from public workshops held in August 1999. The scoping process will continue throughout the development of the environmental document.

Impacts caused by the construction and operation of the facility will vary according to the transportation alternative utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation route improvement), air and noise impacts from construction equipment and operation of the facility, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right of way encroachment, and impacts to residents and businesses based on potential displacements.

Letters describing the proposed action soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Environmental Impact Statement should be directed to the FHWA at the address provided above.

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

Issued on: December 23, 1999.

Wilbur Lee Gibbons,

Urban Program Engineer, Austin, Texas.

[FR Doc. 00–199 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Corridor 18 (Proposed Extension of I–69 From Indianapolis to Evansville, Indiana)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed extension of I–69 from Indianapolis to Evansville in Southwest Indiana (Corridor 18).

FOR FURTHER INFORMATION CONTACT: Larry Heil, Planning and Program Development Manager, Federal Highway Administration, Federal Building, Room 254, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Telephone (317) 226–7491, or Cristine Klika, Commissioner, Indiana Department of Transportation, 100 N. Senate Avenue, Room N755, Indianapolis, Indiana 46204–2217, Telephone (317) 232–5526.

SUPPLEMENTARY INFORMATION: The FWHA in cooperation with the Indiana Department of Transportation (INDOT) will prepare a Tier 1 Environmental Impact Statement (EIS) on proposed highway corridors to provide better access to Southwest Indiana and better access between Indianapolis and Evansville. The southern terminus of the proposed action will be I–64 just north of Evansville, Indiana and the northern terminus will be I–465 in Indianapolis, Indiana. The length of the proposed corridors will vary between 225 and 274 kilometers (140 and 170 miles).

A previous Notice of Intent (NOI) was published on December 5, 1990 to prepare an Environmental Impact Statement for a section of highway between Indianapolis and Evansville titled the Southwest Indiana Highway. The Southwest Indiana Highway Draft Environmental Impact Statement (DEIS) was approved for circulation by FHWA on March 27, 1996 and circulated for review and comment. Based upon comments received on the DEIS, the scope and termini of the proposed action are hereby being expanded to include the entire corridor between Indianapolis and Evansville, Indiana. The original December 5, 1999 NOI and March 27, 1996 DEIS for the Southwest Indiana Highway are hereby formally withdrawn. The proposed extension of I–69 from Indianapolis to Evansville (Corridor 18) Tier 1 Environmental Impact Statement described in this NOI will be the decision-making process that serves to replace the previous Southwest Indiana Highway decision-making process.

The essence of the Tier 1 Environmental Impact Statement for this proposed action will be to resolve ''big picture'' planning issues such as ''build'' vs. ''no-build''; modal preferences; preferred corridor; and logical termini for ''projects of independent utility'' within the preferred corridor.

This proposed action is intended to strengthen the highway network in Southwest Indiana by providing improved linkages among the existing highway routes in the region and by providing more direct connections among the region's major population centers. By strengthening the highway network, this proposed action is intended to stimulate economic growth in Southwest Indiana by enhancing access to existing centers of economic activity and creating new opportunities where possible.

This proposed action is intended to complete the Indiana portion of Corridor 18, a strategic, high priority highway serving east-central United States. Corridor 18 is planned to be a continuous north-south corridor linking Canada, the United States, and Mexico. Any alternative corridors under evaluation in Southwest Indiana must be analyzed with respect to meeting the objectives of Corridor 18.

The development of the traditional environmental impact study for a project of this length (225 to 274 kilometers (140 to 170 miles)) and scale (the entire region of Southwest Indiana) would be a lengthy process and would result in a voluminous and unwieldy environmental impact statement. Consequently, the FHWA after consultation with various resource agencies, is using a *tiered* EIS concept to focus on issues in an organized manner as discussed in the Council of

Environmental Quality (CEQ) regulations at 40 CFR 1502.20. The Tier 1 document will be a detailed document with a comprehensive, in-depth analysis of alternative corridors. The Tier 1 document will involve extensive environmental studies, as well as transportation studies, economic impact studies, and cost analysis. This document will provide the basis for FHWA to grant corridor location approval for a specific corridor.

The Tier 2 documents will be a series of smaller studies for individual sections of the corridor. These sections of the corridor would have independent utility—*i.e.,* each section could serve a useful transportation purpose by itself. Within each section of the corridor, specific alignments would be identified and evaluated based upon their social, economic and environmental impacts. The Tier 2 documents would be more closely tailored to address the needs of the communities located within each project section.

A scoping meeting will be held for the regulatory agencies followed by several public scoping meetings held at various locations in the project area. Early Coordination letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. As part of the process, public hearings will also be held. Public notice will be given as to the time and place of the meetings and hearings. The public hearings will be held after the draft EIS is available for review.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and this Tier 1 EIS should be directed to the FHWA or the INDOT at the address provided above.

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

Issued on: December 21, 1999.

Lawrence M. Heil,

Planning and Program Development Manager, Indianapolis, IN.

[FR Doc. 00–201 Filed 01–04–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Tippecanoe, Carroll and Cass Countries, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of scoping meeting.

SUMMARY: The FHWA is issuing an announcement to the public that a Scoping Meeting will take place in regards to the environmental document for a proposed transportation project in Tippecanoe, Carroll and Cass Countries, Indiana to improve and/or relocate SR 25 from Lafayette to Logansport, a distance of approximately 54 kilometers (34 miles). The meeting will be held on Tuesday, February 15, 2000 at 8:00 a.m. in the Radisson Inn Lafayette Meeting Room, located at 4343 State Road 26 East, Lafayette, Indiana.

FOR FURTHER INFORMATION CONTACT: Larry Heil, Planning and Program Development Manager, Federal Highway Administrator, Room 254, Federal Office Building, 575 North Pennyslvania Street, Indianapolis, Indiana 46204, Telephone (317) 226–7491.

SUPPLEMENTARY INFORMATION: The purpose of the scoping meeting is to invite local, State, and Federal agencies to help identify issues that may impact the proposed project. Scoping is intended to ensure that problems are identified early and properly studied, that issues of little significance do not consume time and effort, that the draft EIS is thorough and balanced, and that delays aoccasioned by an inadequate draft EIS is avoided. The scoping process should identify the public and agency concerns; clearly define the environmental issues and alternatives to be examined in the EIS including the elimination of nonsignificant issues; identify related issues which originate from separate legislation, regulation, or Executive Order (*e.g.,* historic preservation or endangered species concerns); and identify state and local agency requirements which must be addressed.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the environmental document should be directed to the FHWA at the address provided above.

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

Issued on: December 21, 1999.

Lawrence M. Heil,

Planning and Program Development Manager, Indianapolis, Indiana

[FR Doc. 00–202 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Part 249 Preservation of Air Carrier Records

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of DOT requiring certificated air carriers to preserve accounting records, consumer complaint letters, reservation reports and records, system reports of aircraft movements, etc.

DATES: Written comments should be submitted by March 6, 2000.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. (202) 366–3383, or EMAIL bernard.stankus@bts.gov.

COMMENTS: Comments should identify the OMB # 2138–0006 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0006. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0006

Title: Preservation of Air Carrier Records Part 249.

Form No.: None.

Type of Review: Extension of a currently approved recordkeeping requirement:

Respondents: Certificated air carriers and public charter operators.

Number of Respondents: 130 certificated air carriers 350 public charter operators.

Total Annual Burden: 688 hours.

Needs and Uses: Part 249 requires the retention of such records as general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and ledgers, subsidy records documenting underlying financial and statistical reports to the Department, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, it may be retained for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

Not only is it imperative that carriers and charter operators retain source documentation, but it is critical that we ensure that DOT has access to these records. Given DOT's established information needs for such reports, the underlying support documentation must be retained for a reasonable period of time. Absent the retention requirements, the documentary support for such reports may or may not exist for audit/validation purposes and the relevance and usefulness of carrier submissions would be impaired, since the data could not be verified to the source on a test basis.

Donald W. Bright,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 00–161 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Small Aircraft Operators—Form 298–C

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of BTS collecting financial, traffic and operating statistics from small certificated and commuter air carriers. Small certificated air carriers (operate aircraft with 60 seats or less or with 18,000 pounds of payload capacity or less) must file the five quarterly schedules listed below:

A–1 *Report of Flight and Traffic Statistics in Scheduled Passenger Operations,*

E–1 *Report of Nonscheduled Passenger Enplanements by Small Certificated Air Carriers,*

F–1 *Report of Financial Data,*

F–2 *Report of Aircraft Operating Expenses and Related Statistics,* and

T–1 *Report of Revenue Traffic by On-Line Origin and Destination.*

Commuter air carriers must file the three quarterly schedules listed below:

A–1 *Report of Flight and Traffic Statistics in Scheduled Passenger Operations,*

F–1 *Report of Financial Data,* and

T–1 *Report of Revenue Traffic by On-Line Origin and Destination.*

Commenters should address whether BTS accurately estimated the reporting burden and if there are other ways to enhance the quality, utility and clarity of the information collected.

DATES: Written comments should be submitted by March 6, 2000.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, fax # (202) 366–3383, or email bernard.stankus@bts.gov.

COMMENTS: Comments should identify the OMB # 2138–0009 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0009. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0009

Title: Report of Financial and Operating Statistics for Small Aircraft Operators—Form 298–C.

Form No.: 298–C.

Type of Review: Extension of a currently approved collection.

Respondents: Small certificated and commuter air carriers.

Number of Respondents: 100.

Estimated Time Per Response: 16 hours for small certificated, 7 hours for commuters.

Total Annual Burden: 5,000 hours.

Needs and Uses: Program Uses of Form 298–C Data.

Mail Rates

The Department of Transportation (DOT) sets and updates the Intra-Alaska Bush mail rates based on carrier expense, traffic, and operational data. Form 298–C cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' economic well-being.

Essential Air Service

DOT also must determine a community's eligibility as an essential air service (EAS) point. If the community qualifies as an EAS point, a determination is made as to what level of service the community is entitled and how much, if any, compensation must be paid to air carriers that provide the service.

After DOT has determined that a community is eligible to receive EAS, DOT often has to select a carrier to provide the service. Some of the carrier selection criteria are historic presence in the community, reliability of carrier service, financial stability of the carrier, and carrier cost structure.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. domestic carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR Part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in the Form 298–

C file for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

The quarterly financial submissions by commuter and small certificated air carriers are used in determining each carrier's continuing fitness to operate. Section 41738 of Title 49 of the United States Code requires DOT to find all commuter and small certificated air carriers fit, willing and able to conduct passenger service as a prerequisite to providing such service to an eligible essential air service point. In making a fitness determination, DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating as a commuter, DOT is required to monitor its continuing fitness.

Industry Analysis

The Secretary, Deputy Secretary and other senior DOT officials must be kept fully informed and advised of all current and developing economic issues affecting the airline industry. This is accomplished through the preparation of testimony given before Congressional committees, briefing and status papers, speech preparation, and memoranda recommending decisions or listing available options.

The analytical methodologies employed under this program are as varied as the nature of the particular aviation policy issues that confront senior DOT officials. In preparing financial condition reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers may use the same information as well as airport activity data and market data. In summary, the nature of a particular aviation issue determines the particular methodology used to prepare the analysis.

Safety Analysis

The FAA evaluates the adequacy of aviation safety regulations, standards, policies and procedures. Problem areas are identified and recommendations are developed for appropriate solutions. Enplanement data are used in evaluating the safety status of carriers. Passenger-miles are used to calculate fatality and injury rates, while aircraft-miles are used in performing risk analysis and comparative analyses with other traffic modes. Departure data are used to calculate accident/incident rates, developing rates of near misses, and assessing the significance of the incident of operational errors.

Forecasting

Traffic schedules are used to derive air carrier operations at non-tower airports. Historical aircraft departure data are used to supplement and validate other sources of Terminal Area Forecasts (TAF). The aircraft operations data in the TAF are needed by the National Plan of Integrated Airports System (NPIAS) to prepare airport master plans. In addition, aircraft operations forecast data in TAF are used in developing benefit/cost ratios for tower establishment and tower discontinuance criteria, for supporting decisions on the purchase of safety-related avionics equipment, and for the allocation of scarce resources for the construction or expansion of runways and other airport facilities.

Historical enplanement data are required to produce short, medium, and long range passenger demand forecasts for all airports with passenger service. These forecasts are presented in the TAF data base, which contains approximately 4,000 airports, including all airports in the NPIAS. TAF enplanement data are used in the preparation of various airport master plans and in response to requests for specific airport information from Congress, states, and the general public.

Historical passenger enplanement data, aircraft departure data, and freight and mail tons enplaned by airport are all used to project air carrier traffic and cargo activity levels for hub airports.

Cost/Benefit Analysis

Safety rules proposed by the FAA operating units are submitted for economic analysis. Under established costing methodologies, which use various cost and traffic data, accident data, and risk analysis, the proposed rules are evaluated on (1) a cost/benefit basis, (2) regulatory flexibility basis and, (3) an international trade impact basis.

Allocation of Airport and Airways Improvement Funds

A revenue passenger enplanement formula prescribed in the Airport and Airway Improvement Act is used to determine the amount of funds to be allocated to each airport. Form 298–C schedules that identify revenue passengers enplaned at individual airports in the United States and Trust Territories, are used for the formula.

Since several airports in the national system are heavily involved in air freight, all-cargo data, such as revenue tons enplaned and aircraft departures, are used to plan for future needs of those airports. Scheduled aircraft departures by aircraft type by airport are used in determining the practical annual capacity (PANCAP) at airports, as prescribed in FAA Advisory Circular ''Airport Capacity Criteria Used in Preparing the National Airport Plan.'' PANCAP is a safety-related benchmark measure which indicates when airport management should be concerned about capacity problems, delays and possible needed airport expansion or runway construction.

Noise Abatement

Air carrier traffic data by airport are used in assessing the level and frequency of service at individual airports in order to determine the environmental noise impact of carrier operations. Also, aircraft operating data are used to assess carrier compliance with noise abatement agreements.

Donald W. Bright,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 00–162 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates: Form 183

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of BTS collecting reports from air carriers on the aggregated indebtedness balance of a political candidate or party for Federal office. The reports are required when the aggregated indebtedness is over $5,000 on the last day of a month.

DATES: Written comments should be submitted by March 6, 2000.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. (202) 366–3383 or EMAIL bernard.stankus@bts.gov.

COMMENTS: Comments should identify the OMB # 2138–0016 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0016. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTAL INFORMATION:

OMB Approval No. 2138–0016.

Title: Report of Extension of Credit to Political Candidates—Form 183

Form No.: 183.

Type of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers.

Number of Respondents: 2.

Number of Responses: 24.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its obligations under the Federal Election Campaign Act to collect data on the extension of unsecured credit to candidates for Federal office. Certificated air carriers submit this data.

Donald W. Bright,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 00–164 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Report of Traffic and Capacity Statistics—The T–100 System

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of collecting market and segment traffic statistics from U.S. and foreign air carriers.

DATES: Written comments should be submitted by March 6, 2000.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX NO. (202) 366–3383 or EMAIL bernard.stankus@bts.gov.

COMMENTS: Comments should identify the OMB # 2138–0040 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0040. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0040

Title: Report of Traffic and Capacity Statistics—The T–100 System.

Form No.: Schedule T–100 and Schedule T–100(f).

Type of Review: Extension of a currently approved collection.

Respondents: U.S. certificated and foreign air carriers.

Number of Respondents: 90 U.S. certificated air carriers 176 foreign air carriers.

Number of Responses: 3192.

Estimated Time Per Response: 10 hours per U.S. carrier 1.5 hours per foreign carrier.

Total Annual Burden: 14,000 hours.

Needs and Uses: Air services between the United States and most foreign countries are governed by bilateral aviation agreements. Evaluations of existing bilateral agreements and proposed changes to such agreements are based on a determination of the traffic and revenues between the United States and foreign countries for scheduled passenger and cargo flights as well as charter services. In order to determine conditions of reciprocity and the overall balance of trade, DOT conducts similar analyses for countries with which the United States does not have bilateral aviation agreements. Information used in these analyses includes traffic volume by countries and by city-pairs for passenger and cargo services and the corresponding traffic yields. Data such as passenger and cargo load factors, aircraft seating configurations, cargo capacities, and aircraft unit costs are also used.

Air Carrier Safety

The Department is responsible for monitoring the safety levels and continuing fitness of individual air carrier operators. These programs conduct risk analysis and evaluations based on air carrier traffic and capacity statistics. For instance, if a carrier is rapidly expanding its operations, traffic data may indicate whether its expansion is exceeding its capacity for growth. Further, Departmental decisions as to the frequency and intensity of in-depth inspections are affected by such activity indicators.

International Routes

In air carrier selection cases for limited entry international routes, the competing air carriers are required to submit an operating plan. To analyze a proposed operating plan, the Department uses current and historical traffic and capacity data of the applicant and other air carriers serving the relevant markets to determine the reliability of the applicant's financial and traffic forecasts and to evaluate the applicant's competing fare and service proposals.

In a route case where an air carrier proposes ''primary service'' and ''behind gateway'' service, timely and consistent data are essential for the Department to respond to the procedural deadlines mandated by the Airline Deregulation Act in route application proceedings, such as the 150 days given to the Administrative Law Judge to receive evidence, conduct a hearing, and issue a Recommended Decision.

International/Alaska Mail Rates

The Department is responsible for establishing international and intra-Alaska mail rates. Separate international mail rates are set based on scheduled operations in four geographic areas: Transborder, Latin America, the Atlantic, and the Pacific. The rate structure is updated biannually to reflect changes in unit costs in each ratemaking entity. In the rate-making process, the investment base and area cost calculations use traffic and capacity data, such as enplaned tons and available ton-miles, to develop the required unit cost data, as well as to evaluate the reasonableness of carrier cost allocations between entities.

International Fares and Rates

The Department is charged with establishing regulatory benchmarks (zones of reasonableness) for its review of international fares and rates for passenger and cargo traffic, respectively. The benchmark for passenger fares is

the Standard Foreign Fare Level (SFFL) and the benchmark for cargo rates is the Standard Foreign Rate Level (SFRL). Both establish levels below which proposed fares or rates normally will not be suspended. These standards rely upon cost and capacity data by entity (*i.e.,* Latin America, Pacific and Atlantic), and require that such data be uniform among the various air carrier submissions.

Review of IATA Agreements

The Department reviews all of the International Air Transport Association (IATA) agreements on fares, rates and rules governing international air transportation to ensure that such agreements meet the public interest criteria set forth in the Federal Aviation Act of 1958, as amended (FAAct). Current and historical summary traffic and capacity data, such as revenue ton-miles and available ton-miles, by type of aircraft, type of service, and length of haul are needed in these analyses: (1) To develop the volume elements that are required for making various passenger/cargo cost allocations, (2) to evaluate fluctuations in volume of scheduled and charter services, (3) to assess the competitive impact of different operations such as charter versus scheduled, (4) to calculate load factors by aircraft type, and (5) to monitor traffic in specific markets.

Foreign Air Carriers Applications

Foreign air carriers are required to submit to the Department applications for operating authority to the United States. In reviewing foreign air carrier applications, the Department must find that the requested authority is encompassed in a bilateral aviation agreement or other intergovernmental understanding, or, in the absence of such an agreement or an understanding, that granting the application is consistent with the public interest. In these latter cases, T–100 data are used in assessing the level of benefits that carriers of the applicant's homeland presently are receiving from their United States operations. In addition, those benefits, coupled with the value of the authority requested by the applicant carrier, are compared to the benefits accruing to U.S. carriers from their operations in the applicant's homeland. This assessment is critical in making the necessary public interest determination.

Air Carrier Fitness

The Department is required to determine whether or not applicants for certificate authority are fit, willing and able to conduct the proposed level of service, and whether current certificate holders remain fit. The requirement also applies to all established air carriers that propose a substantial change in operations, or whose certificates have been dormant for over one year and want to resume service.

In air carrier fitness determinations, T–100 nonstop segment and on-flight market statistics are reviewed to analyze an air carrier's level of traffic and capacity. Load factors (passenger and cargo) are compared with those of other air carriers with similar operating characteristics, and used to assess trends in the level of operations.

Acquisitions and Mergers

While the Justice Department has primary responsibility over air carrier acquisitions and mergers, the Department reviews the transfer of international routes involved in acquisitions and mergers to determine if they would substantially reduce competition, or if they in some other way would be inconsistent with the public interest. In making these determinations, the proposed transaction's effect on competition in the markets served by the affected air carriers is analyzed. This analysis includes, among other things, a consideration of the volume of traffic and available capacity, the flight segments and origins-destinations involved, and the existence of entry barriers, such as limited airport slots or gate capacity. Also included is a review of the volume of traffic handled by each air carrier at specific airports and in specific markets which would be affected by the proposed acquisition or merger.

The Justice Department also uses T–100 data in carrying out its responsibilities relating to airline competition and consolidation.

Airline Industry Status Evaluations

The Department apprizes Congress, the Administration and others of the effect major changes or innovations are having on the air transportation industry. For this purpose, summary traffic and capacity data as well as the detailed segment and market data are essential. These data must be timely to be relevant for analyzing emerging issues and must be based upon uniform and reliable data submissions that are consistent with the Department's regulatory requirements.

Safety Surveillance and Inspection/Operational Safety Analysis

The FAA uses summary traffic and capacity statistics and total airborne hours, broken down by air carrier, as important safety indicators. The FAA uses these data in allocating inspection resources and in making decisions as to increased safety surveillance. Similarly, airport activity statistics are used by the FAA to develop airport profiles and establish priorities for airport inspections.

Safety Forecasting and Regulatory Analysis

The FAA uses summary traffic, capacity and airport activity statistics to prepare the air carrier traffic and operation forecasts that are used in developing its budget and staffing plans, facility and equipment funding levels, and environmental impact and policy studies.

National Plan of Integrated Airport Systems

The FAA is responsible for preparing and updating the National Plan of Integrated Airport Systems (NPIAS), a 10-year planning document, that forecasts the developmental needs for maintaining and upgrading the national system of integrated airports. Reported air carrier traffic and capacity data are used to continuously update the NPIAS for system changes such as current air carrier hub transportation practices. In projecting future airport service levels and the impact of seasonal flight schedule adjustments on operations, the aircraft types handled and services available by airport are considered.

System Planning at Airports

Under the Airport and Airways Improvement Act of 1982 (Pub. L. 97–248), the FAA is charged with administering a series of grants that are designed to accomplish the necessary airport planning for future development and growth. These grants are made to state, metropolitan, and regional aviation authorities to fund needed airport systems planning work. Individual airport activity statistics, nonstop market data and service segment data are used to prepare airport activity level forecasts.

Airport Capacity Analysis

Aircraft type operating data (the mix of aircraft at an airport) are used in determining the practical annual capacity (PANCAP) at airports as prescribed in FAA Advisory Circular ''Airport Capacity Criteria Used in Preparing the National Airport Plan.'' The PANCAP is a safety-related benchmark measure of the annual airport capacity or level of operations. It is a predictive measure which indicates potential capacity problems, delays, and possible airport expansion or runway construction needs. If the level of

operations at an airport exceeds PANCAP significantly, the frequency and length of delays will increase, with a potential concurrent risk of accidents. Under this program, FAA develops ways of increasing airport capacity at congested airports.

Airport Improvement

The Airport and Airway Improvement Act of 1982 includes a revenue passenger enplanement formula that is used by the FAA to allocate airport improvement program (entitlement) funds to owners of primary airports. A primary airport is one which accounts for more than 0.01 percent of the total passengers enplaned at U.S. airports. The passenger enplanement data, both summary and by airport, contained in T–100, T–100(f) and the supplementary schedules are used in calculating the monies due each primary airport. The T–100 System is the sole data base used by FAA in determining U.S. certificated and foreign air carrier enplanements.

War Air Service Program

The Department is responsible under Executive Order 11490, as amended, for emergency preparedness planning in the event of war or national emergency. To fulfill its mobilization responsibilities for airlift in the event of a national emergency, the Department needs timely traffic and capacity data. Data elements used in assessing total available airlift capacity include for each aircraft operator: the number of aircraft by type, the airframe license number, the payload or capacity (passenger and/or cargo), and whether or not the aircraft is approved for over-water operations. Revenue aircraft miles, revenue aircraft hours (airborne), aircraft fuels issued (gallons), aircraft days assigned to service, and aircraft hours (ramp-to-ramp) are also needed for each reported aircraft type to assess aircraft fleet mobilization characteristics and capabilities.

International Civil Aviation Organization

Under Article 67 of the 1944 Chicago Convention, the United States is obligated to report certain individual U.S. air carrier data to the International Civil Aviation Organization (ICAO). Much of the traffic data supplied to ICAO are extracted from T–100 and the supplementary schedules.

Donald W. Bright,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 00–165 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee schedule for the transfer of book-entry securities maintained on the National Book-Entry System (NBES). This new fee schedule will commence on April 1, 2000. The new basic fee for a Treasury book-entry security transfer, will result in a 13% savings for our NBES customers. Based on current projected volumes, this should amount to a savings of about $1.7 million annually. Concurrent with Treasury's fee reduction, the Federal Reserve will be reducing the fee for the movement of funds resulting from a securities transfer. The combined savings will be 18%, and should amount to about $2.6 million annually.

In addition to the basic fee, off-line transfers have a surcharge. The surcharge for an off-line Treasury book-entry transfer will be increasing 38%.

EFFECTIVE DATE: The new fees will go into effect April 1, 2000.

FOR FURTHER INFORMATION CONTACT:

Edward C. Leithead, Director, Primary & Secondary Market Fixed Income Securities (Financing), Bureau of the Public Debt, Suite 3014, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–6358.

Diane M. Polowczuk, Government Securities Specialist (Financing), Bureau of the Public Debt, Room 510, 999 E Street NW, Washington, DC 20239–0001, telephone (202) 691–3550.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities maintained on NBES.

Based on the latest review of book-entry costs and volumes, Treasury will decrease the basic fee and increase the off-line surcharge from the levels currently in effect. Beginning April 1, 2000, the basic fee will be $.65 for each securities transfer and reversal sent and received, a 13% fee reduction per transfer. The current off-line surcharge of $13.00 will increase to $18.00, which is a 38% increase.

The basic transfer fee assessed to both senders and receivers reflects the decreased costs to process a transfer. The increased off-line surcharge reflects the additional costs associated with the processing of off-line security transfers.

The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

The fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. The Federal Reserve System assesses a fee to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies on NBES. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System in this issue of the **Federal Register** (Docket No. 1054).

The following is the Treasury fee schedule that will be effective April 1, 2000, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1]

Effective April 1, 2000 [In Dollars]

Transfer type	Basic fee	Off-line surcharge	Funds [2] movement fee	Total fee
On-line transfer originated	.65	.00	.05	.70
On-line transfer received	.65	.00	.05	.70
On-line reversal transfer originated	.65	.00	.05	.70
On-line reversal transfer received	.65	.00	.05	.70
Off-line transfer originated	.65	18.00	.05	18.70
Off-line transfer received	.65	18.00	.05	18.70
Off-line account switch received	.65	.00	.05	.70
Off-line reversal transfer originated	.65	18.00	.05	18.70
Off-line reversal transfer received	.65	18.00	.05	18.70

[1] The Treasury does not charge a fee for account maintenance, the stripping and reconstituting of Treasury securities, or the wires associated with original issues, or interest and redemption payments. The Treasury currently absorbs these costs and will continue to do so.

[2] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Dated: December 17, 1999.

Donald V. HAMMOND,

Fiscal Assistant Secretary.

[FR Doc. 00–43 Filed 1–4–00; 8:45 am]

BILLING CODE 4810–35–P

Federal Register

Wednesday
January 5, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 108, 109, 111, 129, and 191
Certification of Screening Companies; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108, 109, 111, 129, and 191

[Docket No. FAA–1999–6673; Notice No. 99–21]

RIN 2120–AG84

Certification of Screening Companies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. This proposal is in response to a recommendation by the White House Commission on Aviation Safety and Security and to a Congressional mandate in the Federal Aviation Reauthorization Act of 1996. The proposal is intended to improve the screening of passengers, accessible property, checked baggage, and cargo and to provide standards for consistent high performance and increased screening company accountability.

DATES: Comments must be received on or before April 4, 2000.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6673, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Karl Shrum, Manager, Civil Aviation Security Division, Office of Civil Aviation Security Policy and Planning (ACP–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202)267–3946.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date. All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Comments received on this proposal will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. However, the Assistant Administrator for Civil Aviation Security has determined that the security programs required by parts 108, 109, and 129 contain sensitive security information. As such, the availability of information pertaining to these security programs is governed by 14 CFR part 191. Carriers, screening companies, and others who wish to comment on this document should be cautious not to include in their comments any information contained in any security program.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–6673.'' The postcard will be date stamped and mailed to the commenter.

To give the public an additional opportunity to comment on the NPRM, the FAA anticipates planning public meetings. If the FAA determines that it is appropriate to hold such meetings, a separate notice announcing the times, locations, and procedures for public meetings will be published in the **Federal Register**.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm, or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Outline of Preamble

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A. Current Requirements.
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D. The Advance Notice of Proposed Rulemaking (ANPRM).
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C. Roles of Carriers and Screening Companies.
D. Compliance and Enforcement Issues.
E. New Part 111.
F. Screening of Cargo.
G. Screening Standard Security Program (SSSP).
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III. Proposed Part 111: Section-by-Section Discussion

Subpart A—General

A. 111.1 Applicability.
B. 111.3 Definitions.
C. 111.5 Inspection authority.
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Subpart B—Security Program, Certificate, and Operations Specifications

F. 111.101 Performance of screening.
G. 111.103; 111.105; and 111.107 Security programs.
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I. 111.111; 111.113; and 111.115 Operations specifications
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Subpart C—Operations

L. 111.201 Screening of persons and property and acceptance of cargo.
M. 111.203 Use of screening equipment.
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O. 111.207 Disclosure of sensitive security information.
P. 111.209 Screening company management.
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S. 111.215 Training tests: requirements.
T. 111.217 Training tests: cheating and other unauthorized conduct.
U. 111.219 Screener letter of completion of training.
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IV. Proposed Revisions to Parts 108, 109, and 129

A. 108.201(h); 109.203(a); and 129.25(k) Certification requirement.
B. 108.5 and 109.5 Inspection authority.
C. 108.103(b); 109.103(b); and 129.25(c) Security program form, content, and availability.
D. 109.105 and 129.25(e) Approvals and amendments of security programs.
E. 108.201(i), (j), and (k); 109.203(b), (c), and (d); and 129.25(l), (m), and (n) Responsibilities of carriers and screening companies.
F. 108.201(l) and 129.25(o) Public notification regarding additional security measures.
G. 108.205; 109.207; and 129.26 Use of X-ray systems.
H. 108.207 and 129.28 Use of explosives detection systems.
I. 108.229, 109.205, and 129.25(p) Monitoring of screener training tests.
J. Additional proposed requirements to parts 108, 109, and 129.

V. Proposed Revisions to Part 191

A. Protection of sensitive security information (SSI).
B. 191.1 Applicability and definitions.
C. 191.5 Records and information protected by others.
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I. Introduction

I.A. Current Requirements

The Administrator is required to prescribe regulations to protect passengers and property on aircraft operating in air transportation or intrastate air transportation against acts of criminal violence or aircraft piracy. Such protections include searches of persons and property that will be carried aboard an aircraft to ensure that they have no unlawful dangerous weapons, explosives, or other destructive substances (49 U.S.C. 44901–44903). Screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation must be done before the aircraft is boarded, using weapon-detecting facilities or procedures used or operated by employees or agents of the air carriers, intrastate air carriers, or foreign air carriers (49 U.S.C. 44901).

Part 108 of Title 14, Code of Federal Regulations, contains rules in §§ 108.9, 108.17, and 108.20 for air carrier screening operations. These rules, which are available to the general public, provide basic standards for the screeners, equipment, and procedures to be used. In addition, each air carrier required to conduct screening has a nonpublic security program (required under current §§ 108.5 and 108.7) that contains detailed requirements for screening of persons, accessible property, checked baggage, and cargo. All air carriers subject to part 108 have adopted the Air Carrier Standard Security Program (ACSSP). The ACSSP provides identical measures for air carriers. Individual air carriers may request alternate procedures in specific situations if the required level of security can be maintained.

Part 109 of Title 14, Code of Federal Regulations (14 CFR), contains rules in § 109.3 for conducting security procedures by indirect air carriers. An indirect air carrier is any person or entity within the United States, not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in the air transportation of property, and uses, for all or any part of such transportation, the services of a passenger air carrier. This does not include the U.S. Postal Service (USPS) or its representative while acting on behalf of the USPS. This definition does include freight forwarders and air couriers. Each indirect air carrier has a nonpublic security program (§ 109.5) that contains detailed requirements for screening cargo. All indirect air carriers adopt the Indirect Air Carrier Standard Security Program (IACSSP). The IACSSP provides identical measures for indirect air carriers. IACSSP requirements are essentially the same as the requirements in the ACSSP for screening cargo.

Part 129 of Title 14, Code of Federal Regulations, contains rules in §§ 129.25, 129.26, and 129.27 for foreign air carrier screening. Each foreign air carrier conducting screening has a nonpublic security program (§ 129.25) that contains detailed requirements for screening persons, accessible property, checked baggage, and cargo. All foreign air carriers conducting operations in the United States are subject to part 129 and have adopted the Model Security Program (MSP) for their security programs in the United States. The MSP provides identical measures for foreign air carriers. MSP requirements applicable within the United States are essentially the same as the requirements in the ACSSP.

Throughout this notice, air carriers, indirect air carriers, and foreign air carriers are collectively referred to as ''carriers.''

There are several means by which a carrier can conduct screening. It can use its own employees. It can contract with another company to conduct the screening in accordance with the carrier's security program. It can contract with another carrier to conduct screening. In each case, the carrier is required to provide oversight to ensure that all FAA requirements are met.

I.B. History

Since 1985, at least 10 major international terrorist incidents involving aviation have occurred worldwide, including the bombing of Pan Am flight 103 on December 21, 1988, which killed 243 passengers, 16 crewmembers, and 11 people on the ground. While all of the attacks against U.S. civil aviation in this period have taken place abroad, the link between the February 1993 World Trade Center bombing and the January 1995 plot to bomb several U.S. airliners in the Far East suggests that civil aviation in the United States may have become a more attractive target for terrorist attacks. Ramzi Ahmed Yousef was convicted (along with different sets of co-conspirators) for his roles in both plots as well as for the bombing of Philippine Airlines flight 434 in December 1994. Had Yousef's plot to bomb U.S. airliners succeeded, hundreds if not thousands of passengers would almost certainly have been killed.

These incidents have demonstrated the capabilities and intentions of international terrorists to attack the United States and its citizens as well as the ability of such terrorists to operate in the United States. The threat posed by foreign terrorists in the United States remains a serious concern, and the FAA believes that the threat will continue for the foreseeable future.

The threat of terrorist acts against aircraft has led to several actions by the United States Government to strengthen

aviation security. These actions include two Presidential commissions, the Aviation Security Improvement Act of 1990, the Federal Aviation Reauthorization Act of 1996, and several FAA rulemakings to improve security measures at airports. The action proposed in this notice therefore is part of a broad, continuing effort to increase aviation security.

Following the tragic crash of TWA flight 800 on July 17, 1996, the President created the White House Commission on Aviation Safety and Security (the White House Commission). The White House Commission issued an initial report on September 9, 1996, with 20 specific recommendations for improving security. One recommendation was for the development of uniform performance standards for the selection, training, certification, and recertification of screening companies and their employees. The final report, issued on February 12, 1997, reiterated this recommendation.

Before the crash of TWA flight 800, the FAA had become concerned as well that there was a need to reevaluate the overall level of civil aviation security. The FAA asked the Aviation Security Advisory Committee (ASAC) to review the threat assessment of foreign terrorism within the United States, consider the warning and interdiction capabilities of intelligence and law enforcement, examine the vulnerabilities of the domestic civil aviation system, and consider the potential consequences of a successful attack. The ASAC, which consists of representatives from the FAA and other Federal agencies, the aviation industry, and public interest groups, formed a subgroup called the Baseline Working Group (BWG) on July 17, 1996, to evaluate the domestic aviation security ''baseline'' in light of the new threat environment. The BWG released its Domestic Security Baseline Final Report on December 12, 1996. The report presented multiple recommendations for improving aviation security through certifications of screeners and screening companies, rapid deployments of available technologies, and institutional and procedural changes in the U.S. aviation security system.

On October 9, 1996, the President signed the Federal Aviation Reauthorization Act of 1996, Public Law 104–264. Section 302 (49 U.S.C. 44935 note) states:

> The Administrator of the Federal Aviation Administration is directed to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services.

I.C. Aviation Security Screening

Effective aviation security screening is critical to protecting passengers in air transportation against acts of criminal violence and aircraft piracy. It is the front line of defense against potential acts of aviation terrorism. It is therefore imperative that airports, carriers, screening companies, and the FAA work together to strengthen continually the aviation security screening system.

The FAA first required domestic passenger screening in 1973 in response to increasing numbers of hijackings. The focus at that time was to detect weapons, such as handguns and knives, through the use of X-ray and metal detector technologies at security checkpoints. The introduction of screening greatly reduced hijackings in the United States. Since then, the greater challenge to security has been the prevention of aircraft bombings, a challenge that became particularly urgent in the 1980's as various terrorist elements succeeded in bringing down aircraft and causing mass casualties by means of on-board bombs. Some of the bombs used against aircraft have been crude devices, easily detectable by screeners utilizing X-ray machines, but the trend has been toward smaller improvised explosive devices (IED's) and plastic explosives that are more difficult to detect without explosives detection systems (EDS). The threat of IED's has also expanded the initial scope of screening from passengers and carry-on baggage only to include checked baggage and cargo.

The FAA has conducted extensive research regarding how the United States can best counter these evolving threats. The research has centered around both technologies and human factors issues; each is important to thorough, effective screening and poses unique challenges.

The traditional X-ray and metal detector technologies have been supplemented since the mid-1990's with several new advanced screening technologies. An advanced screening technology, as that term is used here, is any technology that is capable of automatic threat identification. These advanced screening technologies include explosives detection systems, explosive trace detectors (ETD), and advanced technology (AT) X-ray-based machines for automatic bulk explosives detection, some of which employ screener assist technologies. At this time EDS-type technologies certified by the FAA apply medical computed axial tomography (CAT) scan technology, but other types of technologies also may meet EDS criteria in the future. The EDS are used to screen checked baggage and have the ability to automatically detect threat types and quantities of bulk explosives at FAA-specified detection and false alarm rates, up to the initial system alarm and without human intervention. The AT systems also focus on detecting bulk explosives in checked baggage and have automatic alarm capabilities; however, AT systems do not meet the full EDS standards required by the FAA for all categories of explosives, amounts, detection rates, and false alarm rates. The AT's still have more sophisticated detection capabilities than the standard X-ray systems used for imaging only. The ETD's also detect explosives, but differ in that they are used to analyze and detect minute amounts of explosive residues or vapors, are much smaller in size and less costly than the EDS's and AT's, and are primarily used at screening checkpoints to screen items entering sterile areas.

The FAA currently is deploying several types of advanced screening technologies in the Nation's airports. Each advanced screening technology is capable of detecting specific items. The FAA believes that the most effective approach to screening at this time is to use a combination of these technologies at screening locations.

Some of the technologies being developed focus on the human element of screening. The FAA currently is developing and deploying computer based training (CBT) and threat image projection (TIP) systems that provide initial and recurrent training and monitor screener performance. The potential benefits of CBT are self-paced learning, enhanced opportunities for realistic practice, combined training and performance testing, and instruction that is uniform throughout the country. CBT currently is being used to train screeners in many of the Nation's busiest airports, and the FAA is evaluating its effectiveness at these locations. The FAA anticipates making CBT available for use by all of the carriers but does not anticipate requiring its use at this time. Some private companies also are developing CBT systems that may earn FAA acceptance and the FAA encourages this development.

TIP also has significant potential benefits and is a critical component of this proposed rule. TIP systems currently are being deployed and tested on both X-ray and explosives detection systems. The TIP systems use two different methods of projection—fictional threat image (FTI) and

combined technology image (CTI). FTI superimposes a threat image from an extensive library of images onto the X-ray image of actual passenger baggage being screened. The image appears on the monitor as if a threat object actually exists within the passenger's bag. The screener can check whether the image is an actual threat image before requesting that the bag be screened further. The CTI is a prefabricated image of an entire threat bag and also can be electronically inserted onto a display monitor. For both types of images, screeners are immediately provided with feedback on their ability to detect each threat. TIP exposes screeners to threats on a regular basis to train them to become more adept at detecting threats and to enhance their vigilance. TIP allows the FAA to expose screeners to the latest potential threats and should allow the FAA and the industry to determine what elements make a screener more effective, such as training methods and experience levels. Future TIP data may affect requirements proposed in the security programs.

The FAA also is validating a series of screener selection tests to help screening companies identify applicants who may have natural aptitudes to be effective screeners. Currently, the cognitive skills and processes for optimal detection of threat objects are poorly understood. The FAA sees an immediate need to identify valid tests to select job applicants who should be able to become successful screeners. The FAA currently is administering several screener selection tests to groups of screener trainees as part of their CBT and then measuring their subsequent job performance using TIP. If valid selection tests are developed, the FAA may offer them to carriers and screening companies for optional use but does not anticipate requiring their use at this time.

The FAA will continue its human factors research. Although the new technologies described are highly effective in detecting explosives, the FAA realizes that each one is ultimately dependent on the human operator. Screeners are critical to the screening process. Future human factors research will focus on the attributes, skills, and abilities that make for an effective screener. Such elements may include an individual's cognitive ability, learned skills, education level, quality and amount of training, and experience (i.e., time on the job). Screener pay levels and the quality of supervision may also affect screener performance (i.e., threat detection rates). Analyzing TIP data will help the FAA to explore and confirm or refute many hypotheses regarding the factors that affect screener performance.

What is known currently is that each type of screening and screening technology is unique and requires different skills and abilities. For example, monitoring a walk-through metal detector requires a limited understanding of the technology involved and does not involve image interpretations. Conversely, operating an EDS is much more complex and requires operators to exercise independent judgment as they interpret and make decisions regarding images that are all distinctly different. The screening tasks described in these examples require different types of skills and abilities and require training designed to optimize performance for those particular tasks. The FAA's human factors research will attempt to isolate these skills and abilities and determine how they can best be recognized and developed. With regard to compensation, wages for screeners in the United States currently average $5.75 per hour and some screeners do not receive fringe benefits. Average annual screener turnover rates exceed 100 percent in many locations. Screeners repeatedly state that low wages and minimal benefits, along with infrequent supervisor feedback and frustrating working conditions, cause them to seek employment elsewhere.

Experience in other countries seems to indicate that higher compensation, more training, and frequent testing of their screeners may result in lower turnover rates and more effective screener performance. The FAA has reports from many sources that screening, particularly screening of checked baggage, is conducted more effectively in many other countries than it is in the United States. U.S. citizens traveling abroad also have expressed concern that screening in the United States appears to be less thorough than it is in other countries. While the FAA until recently did not have actual performance data from other countries to substantiate these views, it now has test results that are strongly indicative of better screener performance by some European authorities than by some U.S. screening operators. The test results were derived from joint testing of screeners that the FAA conducted with a European country. FAA special agents and government personnel from the European country tested screeners in each country using the same methods. On average, screeners in the European country were able to detect more than twice as many test objects as screeners in the United States. Screeners in the European country receive significantly more training and higher salaries than screeners in the United States and receive comprehensive benefits. Screeners in the European country also have more screening experience on average than their United States counterparts. U.S. air carriers and screening companies may want to pursue any and all of these factors to achieve higher performance. The FAA will continue to conduct research and examine operational data to determine how these factors affect screener performance and retention, both domestically and in conjunction with foreign governments.

It is clear that the United States can improve upon practices in many of these human factors areas making its aviation screening operations as strong and effective as its other aviation operations and endeavors. Several issues related to human factors in screening, such as performance and the environment in which screeners work, are addressed in this NPRM. The FAA invites comments and supporting data regarding human factors issues such as the potential affects of increased wages, benefits, experience, and training on screener performance.

I.D. The Advance Notice of Proposed Rulemaking (ANPRM)

In response to the Congressional mandate and to the White House Commission report, the FAA published an ANPRM on March 17, 1997 (62 FR 12724), requesting comments on certification of companies providing security screening. The FAA received 20 comments from the public on the ANPRM, all of which were substantive.

Subsequent to the publication of the ANPRM, the FAA began field testing threat image projection systems and evaluating their potential for measuring screener performance. The FAA determined that the TIP systems would be integral to proposing requirements for performance measurements and standards. Therefore, the FAA published an ANPRM withdrawal notice on May 13, 1998 (63 FR 26706), to allow TIP to be adequately field tested and validated before the FAA proceeded with the rulemaking. Although the ANPRM was withdrawn, the FAA considered and incorporated many of the commenters' suggestions in this proposal. The following is a brief summary of the overall comments.

While commenters disagreed on several issues, including the level of oversight responsibility that air carriers should have over certificated screening companies, commenters generally agreed that national standards for security screening operations are

needed. Approximately one-third of the commenters stated that certificating individual screeners would have a greater impact on improving security than certificating screening companies. Most of these commenters also stated that certificating individual screeners would improve screener professionalism and performance.

Approximately half of the commenters agreed that air carriers conducting screening operations should be subject to the same standards as certificated screening companies. A majority of commenters stated that the same screening operation requirements that apply to U.S. carriers should apply to foreign carriers providing services in this country. Several commenters disagreed with any proposal by the FAA to regulate joint-use checkpoints and checkpoint operational configurations. More detailed discussions of the issues raised by commenters are provided throughout the proposed rule section of this preamble.

I.E. Related Rulemakings

On August 1, 1997, the FAA published two NPRM's. Notice No. 97–12 (62 FR 41730) proposes to revise 14 CFR part 108 to update the overall regulatory structure for air carrier security. Notice No. 97–13 (62 FR 41760) proposes to revise 14 CFR part 107 to update the overall regulatory structure for airport security. Notice No. 97–12 and notice No. 97–13 are the result of several years of work by the FAA, airports and air carriers, and the Aviation Security Advisory Committee (ASAC), a committee formed under the Federal Advisory Committee Act (5 U.S.C., appendix II) in April 1989 by the Secretary of Transportation.

This document proposes to amend the proposed rule language of part 108 in Notice No. 97–12 rather than the current part 108. The numbering system for part 108 of this NPRM is based on the numbering system for Notice No. 97–12. The numbering systems for proposed part 111 and revised part 109 are also closely aligned with the Notice No. 97–12 numbering system for clarity and consistency.

II. The Proposal: Overview

This document has two objectives: to propose procedures for certification of screening companies; and to propose other requirements to improve screening, such as performance measurements and new training and FAA testing requirements for screeners. The FAA believes that this proposal would improve performance, improve the consistency and quality of screening, and meet the congressional mandate stated in the Federal Aviation Reauthorization Act of 1996 and the intent of the White House Commission recommendations.

This overview contains a summary of the basic framework of the proposed rule for certification of screening companies. It also contains more detailed discussions of some of the approaches to regulating screening that are implemented in the proposals and the FAA's reasons for using these approaches.

II.A. Summary

The major proposals contained in part 111 and the changes and additions proposed to parts 108, 109, and 129 are as follows:

(1) The proposed rule would require certification of all screening companies that inspect persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon in the United States on behalf of air carriers, indirect air carriers, or foreign air carriers required to adopt and carry out FAA-approved security programs (proposed §§ 111.1 and 111.109(a)).

(2) The certification requirement would include all persons conducting screening within the United States under parts 108, 109, and 129. An air carrier, indirect air carrier, or foreign air carrier that performs screening for itself or for other carriers would have to obtain a screening company certificate (proposed §§ 108.201(h), 109.203(a), and 129.25(k)).

(3) The proposed rule would provide for provisional certificates for new screening companies and screening companies already performing screening at the time of publication of the final rule. Before the end of the provisional period, screening companies would apply for screening company certificates, that would be valid for 5 years (proposed § 111.109(d) and (e)).

(4) Responsibility for the performance of a screening company would be borne by the screening company and the relevant air carrier(s), indirect air carrier(s), or foreign air carrier(s). Carrier oversight would be required (proposed §§ 111.117; 108.103(b); 108.201(i) and (j); 109.103(b); 109.203(b) and (c); and 129.25(c), (l), and (m)).

(5) The proposed rule would require approvals of operations specifications that would include locations of screening sites; types of screening; equipment and methods used to screen; and screener training curricula (proposed §§ 111.113 and 111.115).

(6) The proposed rule would require that screening companies adopt and implement FAA-approved screening company security programs that would include procedures to perform screening functions, including operating equipment; screener testing standards and test administration requirements; threat image projection standards, operating requirements, and data collection methods; and performance standards (proposed §§ 111.103, 111.105, and 111.107).

(7) The proposed rule would set forth requirements for screening companies regarding the screening of persons and property and the use of screening equipment (proposed §§ 111.201 and 111.203).

(8) The proposed rule would add requirements for the use of X-ray systems to part 109 and for the use of explosives detection systems to part 129 (proposed §§ 109.207 and 129.28).

(9) The proposed rule would provide consolidated employment standards for all screening company personnel, including new training requirements for screeners regarding courteous and efficient screening and U.S. civil rights laws and for supervisors regarding leadership and management subjects (proposed § 111.205).

(10) The proposed rule would require that screening companies have qualified management and technical personnel (proposed § 111.209).

(11) The proposed rule would require that screening instructors meet minimum experience and training standards (proposed § 111.211).

(12) The proposed rule would specify training requirements for screening companies regarding training programs and knowledge of subject areas and would require that the training programs be submitted to the FAA for approval (proposed § 111.213).

(13) The proposed rule would require that all screening personnel pass computerized FAA knowledge-based and X-ray interpretation tests before and after their on-the-job training and at the conclusion of their recurrent training and that the tests be monitored by carrier personnel in accordance with the carriers' security programs. The proposed rule would also describe and prohibit specific instances of cheating and other unauthorized conduct (proposed §§ 111.215, 111.217, 108.229, 109.205, and 129.25(p)).

(14) The proposed rule would require that all carriers install threat image projection (TIP) systems on their X-ray systems and that all air carriers and foreign air carriers install TIP systems on their explosives detection systems unless otherwise authorized by the Administrator. Screening companies would be required to use the TIP systems as specified in their security

programs, including collecting and analyzing the TIP data, and to meet the performance measurements and standards set forth in their security programs (proposed §§ 108.205 and 108.207; 129.26 and 129.28; 109.207; and 111.223).

(15) The proposed rule would prohibit interference with screening personnel in the course of their screening duties (proposed § 111.9).

In addition to the above proposed changes, the proposal would amend part 191 to extend SSI requirements to certificated screening companies and their employees.

The FAA is not proposing to require certifications for individual screeners, as some commenters to the ANPRM recommended. The FAA does not have the statutory authority under Title 49 or the Federal Aviation Reauthorization Act of 1996 to require such certification. Other requirements in this proposal would help to improve the professionalism of screeners; e.g., by providing for mobility of screener records (proposed § 111.221) and by requiring letters of completion to be issued to screeners and screener supervisors upon their successful completion of initial, recurrent, and specialized courses of training (proposed § 111.219).

The FAA has also decided not to specifically address joint-use screening locations in this rulemaking, although comments were invited with respect to this issue in the ANPRM. A joint-use screening location is a security location that is screening for multiple carriers. The FAA received several comments to the ANPRM that stated that an agreement should be required for all air carriers to sign with the managing air carrier of a screening location. However, other commenters stated that the concept of joint-use screening locations is an internal management tool of the air carriers that allows flexibility. These commenters believe that it is not appropriate for the FAA to place undue restraints on the management process for joint-use screening locations. After considering the ANPRM comments and reviewing representative samples of joint-use screening location agreements, the FAA has determined that rulemaking is not the best way to address these issues. They would be better addressed in future security program amendments and/or compliance and enforcement policies.

II.B. Certification of All Who Perform Screening

This proposal would require that all companies that perform screening be certificated under part 111, even if they are air carriers, foreign air carriers, or indirect air carriers. This approach is consistent with several comments to the ANPRM that stated that air carriers conducting screening should be subject to the same standards as certificated screening companies.

Certifying all screening companies, including carriers that perform screening, would:

- Provide uniform standards for all companies that intend to provide screening.
- Ensure that all companies that conduct screening benefit from the enhanced requirements imposed upon screening companies in part 111.
- Clearly differentiate between the roles of the air carriers, indirect air carriers, and foreign air carriers as carriers and as certificated screening companies.
- Clarify the relationships among air carriers, indirect air carriers, and foreign air carriers that contract with each other for screening services.

Some commenters to the ANPRM questioned the need to certificate air carriers for the purpose of screening since they are already certificated by the FAA. Air carriers currently are certificated to operate as air carriers under part 119. However, the certification process in part 119 does not include an evaluation of whether an applicant can adequately perform screening functions. The FAA has determined that to fulfill the congressional mandate, all who perform screening shall establish their ability to do so by qualifying for screening company certificates. Any air carrier, indirect air carrier, or foreign air carrier that does not choose to hold a screening company certificate could contract with a certificated screening company to perform its screening.

II.C. Roles of Carriers and Screening Companies

Currently, carriers have statutory and regulatory responsibilities to conduct screening properly. The FAA cannot propose to relieve carriers of these responsibilities. The responsibility of air carriers and foreign air carriers to ensure that screening is conducted on persons and property to be carried in the cabin of an aircraft is in the statute (49 U.S.C. 44901(a)) and cannot be changed by the FAA. As discussed previously, the requirement to certificate screening companies also is in the statute. Issues arise, then, concerning the relationships between the carriers and the screening companies and the proper roles for each. The FAA interprets these statutory provisions as leaving the ultimate responsibility for screening with the carriers and providing for concurrent carrier and screening company responsibilities for some tasks. This relationship is not unlike that between repair stations and air carriers. Repair stations are certificated under part 145 and are responsible for performing maintenance in accordance with regulations; however, the air carriers remain ultimately responsible for the airworthiness of their aircraft. The FAA recognizes that this relationship may be difficult to define, but proposes the following general guidance.

The FAA envisions that the carriers would continue to be responsible for providing proper screening equipment, such as X-ray machines and metal detectors. The carriers would also have primary responsibility to deal with the airport operators on issues regarding the locations of screening equipment in the airports. Finally, and perhaps most importantly, the carriers would be responsible for overseeing the performance of the screening companies to ensure that they carry out their duties.

The screening companies would be responsible for inspecting persons and property for unauthorized explosives, incendiaries, and deadly or dangerous weapons. They would be responsible for ensuring that they use the equipment properly, staff the screening locations adequately, train their screeners properly, and otherwise manage the screening locations so as to enable them to meet the standards for screening in their security programs.

II.D. Compliance and Enforcement Issues

As discussed previously, this proposed rule would not shift the responsibility for screening from air carriers, indirect air carriers, and foreign air carriers to screening companies. Rather, certificating screening companies is a way to assist carriers in ensuring that those who conduct screening are fully qualified to do so. Certification also would make screening companies directly accountable to the FAA for failures to carry out their screening duties. This rule would increase the level of responsibility required of screening companies while improving screening oversight by air carriers, indirect air carriers, and foreign air carriers.

The FAA envisions that screening companies would be primarily responsible for the day-to-day operation of the screening locations. Screening companies generally would be held accountable for screening location failures. The FAA intends to look to screening companies to maintain the

highest standards and to continuously monitor and improve their capabilities.

The full range of actions would be available for use against screening companies that failed to comply with the regulations, their operations specifications, and their security program. These include counseling, administrative action (warning notices and letters of correction), civil penalties, and certificate actions (suspension or revocation of a certificate). In addition, if the screening company was unable to carry out its duties at a specific screening location, the FAA could amend its operations specifications (see § 111.111) to withdraw its authority to screen at that location.

If a company was removed from a location because of its failure to screen properly, the FAA would continue to monitor closely that location as another company came in to conduct screening. The FAA is concerned about situations in which incoming companies use the same equipment and hire the same employees from the unsatisfactory companies and make no real changes in the quality of screening. The FAA would consider requiring incoming companies to take additional corrective measures to ensure that the problems that affected the performance of the previous companies do not recur.

Carriers would continue to be responsible for the overall proper screening of persons and property. They would be directly accountable for failing to carry out duties specifically assigned to them, such as providing the proper screening equipment and carrying out specific oversight functions (such as Ground Security Coordinator duties and auditing functions). In addition, when a screening company failed to screen properly or otherwise failed to carry out its duties, the FAA would carefully evaluate all facts and circumstances to determine whether the carrier should be the subject of enforcement action. In general, repeated or systemic failures of a screening company to comply with the regulations or fundamental failures of the screeners to comply with security requirements might lead to the conclusion that the carrier has failed to conduct screening properly or to oversee the screening company's operations, even if the carrier had conducted the required audits and did not discover problems. The audits would be one tool for the carrier to use but would not limit its responsibility to ensure proper screening. Carriers would be expected to identify problems with the screening company and take corrective action in a timely manner.

If the FAA determines that a screening company is performing poorly, whether at a particular location or in its overall operations, the FAA could require the screening company and/or the responsible air carriers to implement additional security measures under this proposal to maintain system performance. Such additional measures would vary depending on the circumstances and might involve, for example, additional training for screeners, redundant screening of property, or increased management oversight. The measures could slow screening operations at affected locations but would help ensure that thorough, effective screening was being performed. If the additional measures proved ineffective or if the circumstances were extreme, amendments of the screening companies' operations specifications or suspensions or revocations of certificates could result.

The proposal would require that each air carrier or foreign air carrier required by the FAA to implement additional security measures to maintain system performance notify the public of the increased measures by posting signs at affected screening locations (see section IV.F.). The signs would be required to state that the additional security measures being implemented by the air carriers could slow screening operations at those locations, but that the measures are necessary to ensure the safety and security of flights. The proposal is intended to ensure that the traveling public is informed and to increase screening company and air carrier accountability for their operations. The specific language and specifications to be required for the signs would be included in the security programs.

II.E. New Part 111

The FAA proposes to create a new part 111, which would contain all the requirements for screening companies. Part 111 would require certification of all screening companies that perform screening for air carriers under part 108, indirect air carriers under part 109, and foreign air carriers under part 129.

The proposal would affect only the screening that is done by inspecting persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon, as required under parts 108, 109, and 129. These inspections currently are performed by a variety of methods such as manual searches, metal detectors, X-ray machines, explosives detection systems, explosives trace detection systems, and advanced technology devices. The proposal would also amend certain requirements in parts 108, 109, and 129 to accommodate the proposed new part 111.

Forms of screening other than inspection, such as determining that a person is a law enforcement officer with authority to carry a weapon on board aircraft, would not be covered in part 111. These other forms of screening would not have to be done by a certificated screening company. These types of screening would continue to be the responsibility of the carriers. They could be performed, as they are now, by such methods as ticket agents checking the documentation of law enforcement officers flying armed, local law enforcement officers at the checkpoint checking the credentials of law enforcement officers entering the sterile area, or checkpoint security supervisors checking the law enforcement officer's credentials. The checkpoint security supervisors checking these credentials would be doing so as representatives of the carriers, rather than as part of their duties for the certificated screening companies.

II.F. Screening of Cargo

Certain cargo carried on passenger air carriers must be screened. The FAA considered whether this screening should be done only by certificated screening companies and has decided to propose that it should be. If unauthorized explosives or incendiaries are introduced aboard passenger aircraft in cargo, it would be just as devastating as if introduced in checked or carry-on baggage or on passengers. The FAA believes that cargo also must be subjected to rigorous screening controls to avoid such a result.

Accordingly, the FAA proposes that inspections of cargo for unauthorized explosives and incendiaries be done only by certificated screening companies, similar to the proposal for persons, accessible property, and checked baggage. Under this proposal, air carriers and foreign air carriers carrying passengers would be required to ensure that cargo screening is conducted by certificated screening companies. Indirect air carriers that elect to perform required screening (instead of referring their cargo to air carriers or foreign air carriers for required screening) also would be required to hold screening company certificates or contract with certificated screening companies to perform the screening. The FAA believes that a comprehensive approach to certificating all screening companies, including companies that screen cargo, is vital to having a safe, secure, and effective aviation security system. The FAA requests public comments on the issues

relating to certificating indirect air carriers in this NPRM.

II.G. Screening Standard Security Program (SSSP)

In addition to the regulatory requirements, the proposed rule would establish a separate security program for screening companies that would accompany the requirements in proposed part 111. The Screening Standard Security Program (SSSP) would contain detailed and sensitive requirements relating to screening that currently are contained in the carrier security programs, as well as additional requirements related to proposals in part 111. The carriers as well as the screening companies would be required to ensure that their screening companies' security programs are carried out.

The FAA considered proposing that screening companies be required to comply with the standardized security programs for air carriers, foreign air carriers, and indirect air carriers. Requiring screening companies to comply with the ACSSP, MSP, and IACSSP would emphasize that the carriers are primarily responsible for ensuring that screening is properly carried out. It would also prevent having to relocate the screening-related language from the carrier security programs to the screening standard security program. However, the FAA recognizes that this system could result in confusion in some cases where screening companies might have to observe portions of three different security programs—the ACSSP, the MSP, and the IACSSP. Having a separate security program for screening companies would also more clearly delineate the responsibilities of screening companies and those of the carriers, which would continue to be responsible for proper screening. Both part 111 and the Screening Standard Security Program would state that the requirements also are applicable to carriers that conduct screening.

The FAA requests comments on consolidating all screening-related program requirements into one screening standard security program. The FAA has prepared a draft SSSP proposal to accompany the release of this NPRM. Commenters with a need to know, as specified in 14 CFR part 191, may request copies of the draft proposed SSSP from the Office of Civil Aviation Security Policy and Planning as listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

II.H. Screener Qualifications

As discussed in section I.C., it is critical that screeners be highly qualified in order to counter the increasing sophistication of the threats. This proposal contains a number of provisions to promote improved qualifications of screeners. Most notable are the proposed requirements to include FAA testing standards for screening personnel, test administration requirements for carriers, and additional monitoring of screener performance made possible by TIP as discussed in section II.I.

Under this proposal, screeners would be required to pass knowledge-based and X-ray interpretation tests developed by the FAA before beginning on-the-job training. This would help to ensure that all screeners have uniform understanding of their tasks and a consistent high level of achievement. The FAA would provide the tests by amending the screening companies' security programs through notice and comment procedures and would expect the screening companies to train their personnel to pass those tests. Screening companies would have flexibility in designing their training programs and would submit them to the FAA for approval. The FAA is not proposing that training programs be designed in a specific manner, only that they thoroughly and effectively address all of the testing standard subjects. The proposal also would require that the carriers administer and monitor the tests to promote carrier involvement in the training process and to establish closer accountability for the administration of the training tests.

II.I. Performance Measurements and Standards

For the FAA, carriers, and screening companies to monitor the performance of screening companies and to track their level of performance, a consistent means of regularly measuring performance is needed. The FAA, carriers, and screening companies need to be able to monitor how well screeners are detecting threat objects and must be able to determine whether performance is decreasing and whether corrective measures are needed. The FAA, carriers, and screening companies need to be able to measure performance of a screening location to determine what factors lead to better or worse detection and what corrective measures are effective.

Factors that may lead to better or worse detection include the amount of passenger traffic, the type of training that the screeners receive, how often screener functions are rotated, and the conditions under which screeners are working. The FAA, carriers, and screening companies also need to determine which types of threat objects the screeners can readily detect and which types they have difficulty detecting. All of these factors can be analyzed along with other elements that may affect screening ability, such as education level, screening experience, and screener compensation levels. The analyses would be used by the FAA to work more effectively with screening companies and carriers to improve screening continuously. Further, it appears that regular testing of screeners promotes vigilance. Frequent testing can increase screeners' ability to recognize threats that they rarely, if ever, encounter in reality but must be ready to detect should the unlikely event occur.

In order to monitor screening performance and to examine the effects of all of these factors, the means of measuring performance must be consistent, reliable, cost effective, and frequent. The two options for conducting testing are anonymous testing by individuals and computer testing. The FAA and the carriers now rely on testing conducted by individuals. Carriers currently are required to test each screener periodically, as set forth in their security programs.

The FAA uses FAA employees to submit for screening items of baggage that contain test objects that will appear on the X-ray screens to be weapons or explosives. There are a number of limitations involved with this method, however. For instance, the FAA tests cannot be conducted frequently at many screening locations due to the large number of airports in the United States and their diverse locations. The FAA must arrange for different employees to travel to airports and have them change their appearance after each test to prevent the screeners from recognizing them as FAA testers. It is therefore very difficult, costly, and labor-intensive to obtain a large number of tests that accurately measure screeners' success rates and that provide a continuous measure of the success of screening locations, either overall or under specific conditions. Further, when screening personnel realize that the FAA is conducting tests, they sometimes alert other nearby screening locations to expect testing, which can skew the testing results. Because FAA testing is infrequent at many locations, it also can limit the number and variety of test objects that the screeners are exposed to. Also, because the tests are

conducted by individuals, there is the possibility that different FAA employees will apply the test protocols differently, which also could skew the testing results.

To deal with these problems, the FAA has developed TIP, discussed previously in section I.C. This computer-based system is capable of introducing test objects to screeners on the X-ray and EDS systems at various rates set on the computers. The TIP program can be set to run the entire time that a screening location is in use. Test items can be easily added to or changed by simply loading new images or parameters into the computers, providing an efficient means to regularly expose screeners to the most recent and sophisticated threats. The success rates can easily be recorded and later analyzed by the FAA, carriers, and screening companies to monitor continuously how well the screening locations are operating.

The FAA has conducted validation testing of TIP. In addition, at one location one screening company conducted extensive testing of TIP and provided its data to the FAA for analysis. The FAA determined that the detailed results of the FAA and screening company testing should not be made available to the general public because they could be used to attempt to discover ways to defeat the screening system; therefore, the FAA has determined that this information is sensitive security information under 14 CFR part 191. Air carriers, foreign air carriers, and indirect air carriers that have security programs under parts 108, 129, and 109, respectively, may obtain further information on these tests and the FAA's analysis by contacting the Office of Civil Aviation Security Policy and Planning as listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Screening companies that are screening for carriers may obtain copies of the testing results through their carriers. Comments on the data and analyses should be submitted to the Office of Civil Aviation Security Policy and Planning, rather than to the public docket, because of the sensitivity of the information.

Based on all of the data gathered to date, the FAA has determined that TIP is an effective and reliable means to measure screener performance. Accordingly, the proposed rule would require the use of threat image projection systems on all X-ray and explosives detection systems. TIP would be installed over a period of time as specified in the security programs. The specific TIP equipment requirements acceptable to the Administrator would be set forth in the carriers' security programs. The screening companies and carriers would be required to download the data or allow the FAA to download the data in accordance with standards that would be adopted in the security programs through notice and comment procedures. The screening companies and carriers would be able to download the data at any time to monitor their own performance.

The results of TIP would be used to monitor the performance of screening locations, screening companies, and individual screeners. TIP operational data would be analyzed to focus resources on most effectively improving screening to detect threats. TIP data can be used to determine such things as what working conditions lead to better performance, on which topics the screeners need further instruction, and what corrective action or training programs prove to be most successful. The FAA would look at the success rates of screeners detecting various kinds of test objects, the success rates at different times of day and during different traffic levels, and the other factors that may affect screening effectiveness.

TIP also serves as a continuous means of on-the-job training for screeners. Screeners report that being exposed to TIP images keeps them alert and interested, supplements their classroom training, and fosters healthy competition among them to continuously improve their detection rates. The use of TIP provides screeners with immediate feedback regarding their performance and indicates specific areas for improvement.

The FAA anticipates that in the future, TIP data may provide a basis not only to monitor the performance of screening locations but also to establish performance standards. Under such a system, the screening companies and carriers could be required to meet the standards set forth in their security programs for the detection of various threat objects. For instance, the FAA anticipates that it would analyze TIP data to determine the range of screening company detection rates in the United States. It might then set minimum detection percentages that each screening company would have to meet based on the higher detection rates within the range. The minimum detection percentages could be incrementally raised as overall screener performance in the United States rises. The performance standards might vary depending on such factors as the screening system being used and the type of threat object. Initially, however, the FAA could implement overall performance measurement requirements whereby the FAA would collect performance data from all TIP systems installed in the United States and then require corrective action of the screening companies with the lowest performance. These performance standards would be developed based on extensive additional data from TIP systems.

The FAA would propose to add these performance measurement and performance standard requirements as amendments to the security programs through notice and comment procedures. Including these requirements in the security programs would protect them as sensitive security information and allow for flexibility in changing the standards as screening company performance improves in the United States. The use of TIP systems to establish performance measurements and ultimately performance standards would allow the FAA to monitor closely the performance of screening companies.

If performance standards were adopted in the security programs, screening companies and carriers that the FAA determined were not performing to specified standards could be held accountable in any number of ways, as discussed in section II.D.

The FAA currently tests other forms of screening, such as walk-through metal detectors and handwands, similar to the way it currently tests X-ray screening. The FAA may in the future develop performance standards for other screening equipment and proposed amendments to the security programs would be issued.

III. Proposed Part 111: Section-by-Section Discussion

Proposed part 111 would prescribe the requirements for screening company certifications and operations. Part 111 would apply to all screening companies, whether they are performing screening under part 108, 109, or 129. Carriers would be required to ensure that their screening operations, whether conducted by the carriers themselves or by screening companies with which the carriers contract, are conducted in accordance with part 111 requirements.

Subpart A would contain general information relating to applicability, definitions, inspection authority, falsification, and prohibition against interference with screening personnel and is described in paragraphs III.A. through III.E. Subpart B would prescribe requirements for security programs, screening company certificates, operations specifications, and carrier oversight and is described in paragraphs

III.F. through III.K. Subpart C would prescribe requirements relating to screening operations such as the screening of persons and property, the use of screening equipment, employment standards, screening company manager and instructor qualifications, training and testing, and performance measurement and standards among others and is described in paragraphs III.L. through III.W. The following discussion provides details on each part 111 requirement.

Subpart A—General

III.A. § 111.1 Applicability

Proposed § 111.1 states that the part would prescribe the requirements for the certification and operation of screening companies. The requirements in proposed part 111 would apply to each screening company that screens for an air carrier under part 108, for an indirect air carrier under part 109, or for a foreign air carrier under part 129. The proposed requirements would also apply to the air carriers (including those air carriers voluntarily adopting aviation security programs), indirect air carriers, and foreign air carriers that are responsible for conducting, and therefore overseeing, screening operations. Portions of proposed part 111 would also apply to two groups of individuals: all persons conducting screening within the United States under parts 111, 108, 109 and 129 and all persons who interact with screening personnel during screening. ''Person'' as defined in 14 CFR 1.1 means ''an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity.''

The certification requirements in the proposed rule would apply only to screening companies performing screening in the United States. The FAA does not propose at this time to certify screening companies that perform screening for air carriers at foreign airports. Screening in other countries is performed either by the host governments or by private sector screening companies, but under the authority and operational control of the host governments. However, where air carriers have operational control over screening outside of the United States they would be required under this proposal to carry out and comply with all relevant sections of part 111 to the extent allowable by local law, with the exception of those requirements related to screening company certification.

III.B. § 111.3 Definitions

Proposed § 111.3 would define for the purpose of part 111 ''carrier,'' ''screening company,'' ''screening company security program,'' and ''screening location.'' The proposed definitions are needed to clarify the use of these terms in the proposed rule language.

The term ''carrier'' would be defined for the purposes of parts 108, 109, 111, and 129 to refer to an air carrier, an indirect air carrier, or a foreign air carrier.

The term ''screening company'' would be defined to mean an air carrier, indirect air carrier, foreign air carrier, or other entity that inspects persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon, as required under part 111 and 108, 109, or 129, before their entry into a sterile area or carriage aboard an aircraft.

The term ''screening company security program'' would be defined to mean the security program approved by the Administrator under this part.

The term ''screening location'' would be defined to mean any site at which persons or property are inspected for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon. Examples of screening locations are checkpoints where persons and accessible property are screened, ticket counters and baggage makeup rooms where checked bags may be screened, and cargo areas where cargo may be screened.

Additional terms to be defined in the part 108 final rule would also apply to part 111, as would any other definitions contained in parts 109 and 129 of the chapter. Of particular relevance to this rule are the definitions for ''cargo'' and ''checked baggage.''

The term ''cargo'' would be defined in part 108 to mean property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Security programs further define the term cargo.

The term ''checked baggage'' would be defined in part 108 to mean property tendered by or on behalf of a passenger and accepted by an air carrier for transport, which will be inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

III.C. § 111.5 Inspection Authority

This proposed section would clarify that a screening company shall allow FAA inspections and tests to determine its compliance with part 111, its security program, and its operations specifications. The screening company shall also allow FAA inspections and tests of equipment and procedures at screening locations that relate to carrier compliance with their regulations. This proposed section would also require screening companies to provide the FAA with evidence of compliance. Both of these proposed requirements are similar to those in proposed § 108.5 of Notice No. 97–12.

III.D. § 111.7 Falsification

This proposed section would apply falsification requirements to screening companies that are similar to those that apply under current § 108.4. While the provisions of § 108.4 apply to matters involving screening, the inclusion of a falsification rule in part 111 would serve to emphasize the requirements. Under this rule, no person would be permitted to make or cause to be made any fraudulent or intentionally false statement in any application for any security program, certificate, or operations specifications or any amendment thereto under part 111. No person would be permitted to make or cause to be made any fraudulent or intentionally false entry in any record or report that would be kept, made, or used to show compliance with part 111 or to exercise any privileges under part 111. Also, any reproduction or alteration for fraudulent purpose of any report, record, security program, certificate, or operations specifications issued under part 111 would be subject to civil penalties under this proposed rule. There are also criminal statutes that might apply to such activities.

III.E. § 111.9 Prohibition Against Interference with Screening Personnel

The proposed rule would include new requirements prohibiting any person from interfering with, assaulting, threatening, or intimidating screening personnel in the performance of their screening duties. The proposed rule is intended to prohibit interference that might distract or inhibit a screener from effectively performing his or her duties. This rule is necessary to emphasize the importance to safety and security of protecting screeners from undue distractions or attempts to intimidate. Previous instances of such distractions have included excessive verbal abuse of screeners by passengers and certain air carrier employees. Screeners encountering these situations are taken away from their normal duties to deal with the disruptive people, which may affect the screening of other people. The

disruptive persons may be attempting to discourage the screeners from being as thorough as required. Screeners may also need to summon checkpoint screening supervisors and law enforcement officers, taking them away from other duties. Checkpoint disruptions can be potentially dangerous in these situations. This proposal would help support screeners' efforts to be thorough and would help prevent persons from unduly interfering with the screening process. This proposed rule is similar to 14 CFR § 91.11, which prohibits interference with crewmembers aboard aircraft and which also is essential to passenger safety and security. Note that this proposed rule is not intended to prevent good-faith questions from persons seeking to understand the screening of their persons or property. But abusive, distractive behavior and attempts to prevent screeners from performing required screening would be subject to civil penalties under this proposed rule.

Subpart B—Security Program, Certificate, and Operations Specifications

III.F. § 111.101 Performance of Screening

Proposed § 111.101 states that each screening company shall conduct screening and screener training in compliance with the requirements of part 111, its approved screening company security program (see section III.G.), its approved operations specifications, and applicable portions of security directives (SD) and emergency amendments (EA) to security programs. When a response to an imminent threat is required, the FAA issues SD's to air carriers under current § 108.18, and EA's to foreign air carriers and indirect air carriers under §§ 129.25 and 109.5, to require immediate action and response to the threat.

SD's and EA's may be issued to carriers to help them respond to threats that require quick responses. SD's and EA's typically involve a range of differing requirements, only a portion of which may pertain to how the screening companies shall perform their duties. Currently, carriers are required to provide to their screening companies any screening-related information from SD's and EA's and any other applicable information pertaining to threats. Carriers extract the screening-related requirements from the SD's and EA's and forward them to the screening companies.

It appears that the most efficient means for the FAA to issue the SD and EA requirements to screening companies would be to continue the practice of issuing them to the carriers, who then provide appropriate information to their screening companies. It would be inefficient for the FAA to attempt to issue two different SD or EA documents, one with the requirements solely applicable to screening companies and one with all of the requirements for the carriers. Moreover, this emphasizes the ultimate statutory and regulatory responsibilities of the carriers to perform aviation security screening and to ensure that screening companies carry out the requirements in the SD's and EA's.

III.G. §§ 111.103; 111.105; and 111.107 Security Programs

As discussed in II.G., the FAA is proposing to establish a separate security program to accompany proposed part 111. The Screening Standard Security Program (SSSP) would contain requirements for screening persons, accessible property, checked baggage, and cargo for air carriers, foreign air carriers, and indirect air carriers. This would consolidate all of the screening-related requirements into a single source that screening companies could use to carry out their duties. The ACSSP would continue to contain the nonpublic details regarding the air carriers' responsibility to conduct screening under part 108, as would the MSP for foreign air carriers and the IACSSP for indirect air carriers. However, much of the screening information to be contained in the Screening Standard Security Program would be relocated from the ACSSP, MSP, and IACSSP.

Under the proposal, screening companies would be directly responsible for compliance with their security programs and might be subject to enforcement actions if they fail to comply. Screening companies would therefore have a strong interest in complying with the program requirements. Carriers would continue to have an interest in the screening requirements in the security programs, because they would remain responsible for their implementation and oversight by statute and in the case of air carriers and foreign air carriers would be transporting the persons and property being screened. As part of their oversight responsibilities, carriers would be required to have access to, understand, and make available to the FAA upon request copies of the security programs of the companies with which they contract.

Under the proposal, the sections pertaining to security program requirements are organized in the same format that is used in Notice No. 97–12 for part 108. Proposed § 111.103 would be titled ''Security program: adoption and implementation'' and would require that each screening company adopt and carry out an FAA-approved screening company security program that meets the requirements of proposed § 111.105. Proposed § 111.105 would be titled ''Security program: form, content, and availability'' and would provide specific requirements for security programs. Proposed § 111.107 would be titled ''Security program: approval and amendments'' and would describe the procedures for approvals of and amendments to security programs.

Proposed § 111.105 would be divided into three paragraphs. Paragraph (a) would state that a security program shall provide for the safety of persons and property traveling on flights provided by the air carriers and/or foreign air carriers for which a screening company screens against acts of criminal violence and air piracy and the introduction of explosives, incendiaries, or deadly or dangerous weapons. This same wording appears under proposed § 108.103 of Notice No. 97–12 for air carriers, as both parties are responsible for passenger safety. Paragraph (a) would also require that screening company screening performance coordinators (see section III.P.) acknowledge receipt of amendments to their programs in signed, written statements to the FAA within 72 hours. The security programs would have to contain the items listed under paragraph (b) of § 111.105 and be approved by the Administrator.

Proposed § 111.105(b) would list three items that a screening company's security program shall include at a minimum. The security program shall include the following: the procedures used to perform the screening functions specified in proposed § 111.201; the testing standards and training guidelines for screening personnel and instructors; and the performance standards and operating requirements for threat image projection systems. These requirements are further explained in the detailed discussions of the sections.

Proposed § 111.105(c) would describe logistical and availability requirements related to a security program. A screening company would be required to maintain at least one complete copy of its security program at its principal business office and at each airport served and to make a copy of the program available for inspection upon the request of an FAA special agent. All screening companies and applicants for screening company certificates,

regardless of type, would be required to restrict the availability of information in their security programs to those persons with an operational need to know in accordance with § 191.5 and refer requests for such information by other persons to the Administrator. All of these requirements are similar to the requirements for air carriers under proposed § 108.105.

Proposed § 111.107 would be divided into four sections: ''Approval of security program,'' ''Amendment requested by a screening company,'' Amendment by the FAA,'' and ''Emergency amendments.'' The proposed language is based on the language in proposed § 108.105 (Notice No. 97–12) with the exception of the following changes unique to screening companies.

Proposed § 111.107(a) would differ from proposed § 108.105 (Notice No. 97–12) in several ways due to the proposed application process for screening company certifications. The language would state that unless otherwise authorized by the Assistant Administrator, each screening company required to have a security program under this part would be required to submit a signed, written statement to the Assistant Administrator within 30 days of receiving the SSSP from the FAA indicating what its intentions are for adopting and carrying out a security program. A screening company could choose to adopt the SSSP as is or adopt the SSSP after making amendments to it. If a screening company chooses to adopt the SSSP without changing it, the granting of a screening company certificate by the Assistant Administrator would serve as FAA approval of the SSSP. If the screening company chooses to adopt the SSSP after making amendments to it, the Assistant Administrator would either approve the proposed security program within 30 days or give the screening company written notice to modify its program to comply with the applicable security program requirements. The remaining procedures for accepting a notice to modify or petition the notice would be the same as the procedures in proposed § 108.105 of Notice No. 97–12. In this case as well, the Assistant Administrator's granting a screening company certificate to the screening company would serve as FAA approval of the screening company's security program.

Under proposed § 111.107(b), once a screening company is employed by one or more carriers, it would be required to include in any application for amendment to its security program a statement that all carriers for which it screens have been advised of the proposed amendment and have no objection to it. The screening company would also be required to include the name and phone number for each individual who was advised at each carrier. This would ensure that screening companies would have the opportunity to apply to amend their security programs, and also would ensure that carriers would be aware of the applications and have no objections to them. Because carriers would retain primary responsibility for screening, it would be essential that they concur with any changes requested by screening companies that screen on their behalf.

Under proposed § 111.107(c) and (d), if the FAA were to seek to amend a portion of a security program that covers the activities of screening companies, it would provide to screening companies notice and opportunity to comment. Carriers would also be notified and provided opportunities to comment regarding proposed changes to the SSSP that apply to their operations. In the case of an emergency, there would be no prior notice or opportunity to comment.

III.H. § 111.109 Screening Company Certificate

Certificate required. Proposed § 111.109(a) states that a screening company may not perform required screening except under the authority of and in accordance with the provisions of a screening company certificate.

Section 302 of the Federal Aviation Reauthorization Act of 1996 (Public Law 104–264, 49 U.S.C. 44935 note) requires the Administrator to certificate companies providing security screening. The FAA proposes to certificate screening companies under 49 U.S.C. 44707, which provides for examinations and ratings of air agencies. Under that section, certain pilot schools (14 CFR part 141) and repair stations (14 CFR part 145) hold air agency certificates. That section also permits certifications of ''other air agencies the Administrator decides are necessary in the public interest'' (49 U.S.C. 44707(3)).

By certificating screening companies under section 44707 as air agencies, the companies would be under the requirements of 49 U.S.C. 44709. That section makes clear that the Administrator may re-inspect an air agency at any time. Section 44709 also contains the procedure by which the Administrator may amend, modify, suspend, or revoke a certificate. This procedure includes an air agency's right to appeal to the National Transportation Safety Board an order amending, modifying, suspending, or revoking its certificate. The Board's procedure for hearing such appeals, found at 49 CFR part 821, includes a hearing before an administrative law judge and an appeal to the full Board. A party may petition the U.S. Court of Appeals to review a decision of the Board. In this way, a screening company would receive full due process if the FAA were to take action against its certificate.

Application for a screening company certificate. Under proposed § 111.109(b), an application for a screening company certificate shall be made in a form and manner prescribed by the Administrator. The FAA anticipates a two-phase application process as follows. A company interested in applying for certification as a screening company would write to the FAA to request application instructions. The application instructions would require the applicant to submit several items in writing in a standard format. This same application package would eventually become the screening company's operations specifications if the company is approved for certification. (See next preamble section for discussion of operations specifications.) The completed application package would be submitted to the FAA as part of phase one and would contain the following items: the name of the applicant's company; the company's address; incorporation and tax identification information; a letter of intent; an organization chart; a description of the company's ability to perform and comply with regulations; the name of the company's chief executive officer; the names, titles, qualifications, and references for the screening performance coordinators; and the company's procedures for safeguarding and distributing sensitive security information under part 191.

Upon receiving an application package, the FAA would review and verify all relevant information. This review might include verifying past employment and training references for the company's screening performance coordinator. Once the FAA completes its review, it would notify the applicant and provide the applicant with a copy of the Screening Standard Security Program (SSSP). The applicant would need the security program to complete phase two of the application process.

After obtaining a copy of the SSSP, the applicant would review it to determine whether the company wants to adopt the SSSP as is or amend it to incorporate additional company-specific information. The applicant would be instructed to inform the FAA of its decision regarding the SSSP in writing within 30 days of receipt of the SSSP. At that time or soon thereafter the

applicant would prepare and submit to the FAA a copy of its training curriculum and any FAA-requested changes to its original application. (See later discussions regarding these requirements in this notice.) The FAA would provide guidance to the applicant in preparing these documents, as needed. The applicant would submit the documents as part of phase two, and the FAA would review them. If the FAA finds that the documents from phase two meet all requirements, they would be combined with the phase one documents and signed by the Administrator as the company's operations specifications. The Administrator would then issue the company a screening company certificate. If changes are needed, the FAA would request that the applicant make the specific amendments and resubmit them before the Administrator would issue a certificate.

Issuance and renewal-general. Under proposed § 111.109(c), an applicant would be entitled to a certificate if the applicant applies not less than 90 days before the applicant intends to begin screening or the applicant's certificate expires; the Administrator determines that the applicant has met the requirements of this part for the type of screening certificate requested; the issuance would not be contrary to public safety and security; and, unless otherwise authorized by the Administrator, the applicant has not had a screening company certificate revoked within the past 12 months.

Under proposed § 111.109(c)(2), the applicant would have to be able to meet the requirements of this part, to include adopting and carrying out an FAA-approved security program and approved operations specifications for it to be issued a provisional screening company certificate. Proposed § 111.109(c)(3) would describe the requirements that a screening company would have to meet for issuance or renewal of its 5-year screening company certificate. Failure to meet the performance standards set forth in its security program would be grounds for denial of the screening company certificate. Under proposed § 111.109(c)(5), if the FAA revokes a screening company's certificate, the company would have to wait 1 year before a new certificate could be issued unless otherwise authorized by the FAA. This would ensure that the company that had proven unqualified to hold its certificate could not immediately seek a new certificate. This provision is similar to a provision in 49 U.S.C. 44703(c), which relates to airmen certificates.

Provisional Certificates. Under proposed paragraph (d), companies that do not hold screening company certificates would be able to apply for provisional screening company certificates. The FAA would issue a provisional certificate to an applicant if the Administrator finds that the applicant is able to meet the requirements of this part, to include adopting and carrying out an FAA-approved security program and approved operations specifications (proposed § 111.109(c)(2)). The applicant for the provisional screening certificate would be subject to FAA investigation and required to show that it has met the requirements of this part. Under proposed § 111.109(g)(1), a provisional screening company certificate would expire at the end of the 12th month after the month in which it was issued.

The purpose of the proposed provisional certificate would be to provide a probationary period for the FAA to monitor a company's screening performance. During that year, a new screening company would undergo rigorous scrutiny by the FAA, during which time the company would have to demonstrate that it has met the requirements for FAA certification. If before the end of the 12-month period the new screening company has met the requirements of this part, and had adopted and carried out an FAA-approved security program and approved operations specifications, the company would be able to apply for and may be granted a certificate. In accordance with § 111.109(c)(1), the screening company would be required to apply for a screening certificate not less than 60 days before the expiration of the provisional certificate. Companies that cannot demonstrate that they are qualified during the year or that do not meet the performance standards specified in the security program would be denied certification.

The proposed requirements for using a provisional certificate are consistent with several comments to the Advanced Notice of Proposed Rulemaking that stated that new companies should have to operate in a provisional status during which time the FAA would perform compliance and records audits.

Under proposed § 111.109(d)(2), the holder of a provisional certificate would not begin screening at a screening location without first giving the Administrator 7 days' notice, unless otherwise authorized by the Administrator. This notice would allow the FAA to monitor the startup of new company operations at each location. The FAA anticipates that this requirement for 7 days' notice would not result in any start-up delays should a new company replace a company whose operations are decertified at a location. The FAA anticipates that it usually would notify the responsible carriers in advance that they must replace their existing screening company with a different company if performance does not improve within a certain amount of time. This advance notification to the carriers would allow them ample time to make arrangements with a new company, if necessary, and to provide the required 7 days' notice to the FAA. If for some reason the FAA was unable to notify carriers in advance, it would have the authority to waive the 7 days' notice to keep the screening location in operation.

Screening company certificate. Under proposed § 111.109(e), the holder of a provisional screening company certificate could be issued a screening company certificate. The certificate would expire at the end of the 60th month after the month in which it is issued (proposed § 111.109(g)(2)). To issue or renew a screening company certificate, the Administrator would have to determine that the applicant has met the requirements of part 111, to include adopting and carrying out an FAA-approved security program and approved operations specifications, and has implemented applicable portions of the security directives (proposed § 111.109(c)(3)).

As part of its renewal procedures, the FAA would consider the company's performance under the performance standards that could be added to the company's security program. As discussed in section II.I., the FAA anticipates using threat image projection (TIP) data to measure a screening company's overall performance for X-ray and EDS machines and eventually amending the SSSP to include performance standards. This data would then be used to help evaluate whether a screening company certificate should be issued or renewed.

The FAA is proposing that a certificate be valid for 60 months. The screening company would be required to apply for a renewal at least 60 days before the expiration date in order to continue screening operations. The 60-month (5-year) renewal would allow the benefits of renewal without creating an undue burden on the screening company. As with carriers, the FAA would inspect screening companies regularly and would continually monitor operations and tests to determine that each screening company is in compliance with the regulations, its security program, and its operations

specifications. This would result in consistent and close monitoring of screening operations. If significant deficiencies are found during the 5-year period, the FAA would take appropriate action to require correction of those deficiencies or if necessary would revoke the screening company's certificate. In addition, requiring a 5-year renewal of a screening company's certificate would create a more in-depth review than that conducted during periodic inspections. Before the FAA would renew a certificate, it would review the company's operations specifications (including the training curriculum), required records, the results of FAA inspections and any enforcement actions that were taken, performance data, and any other relevant information.

There are several precedents in the FAA regulations for periodic renewals of certificates and approvals. For example, exemptions from certain Federal Aviation Regulations are typically issued for 3 years, and Special Federal Aviation Regulations (SFAR) rarely are issued for longer than 5 years. The duration of pilot school certificates in part 145 is 24 months. Having a specific duration encourages a thorough review of any changes in the environment of a company, such as the addition of new equipment or an increase in the size of operations, as well as a review of past performance and an evaluation of what should be done to improve performance if necessary.

The FAA considered proposing a shorter duration for the screening company certificates but decided to propose the 60-month duration as a reasonable option for obtaining the most benefits with the least burden. The FAA invites comments on the costs and benefits of the proposed duration and of a shorter duration such as 2 or 3 years.

Certificate contents. Proposed paragraph § 111.109(f) lists the information that would be contained on a certificate, such as the name of a company and a certificate number, certificate issuance date, and expiration date.

Proposed compliance. The FAA is considering how much time after the publication of the final rule should be given for carriers and screening companies to come into compliance. The FAA proposes in paragraph § 111.109(k) that the effective date for the final rule be 60 days after its publication in the **Federal Register**. As of that date, no company could begin screening under part 108, 109, or 129 unless it holds a screening company certificate.

The FAA also proposes, however, to provide some accommodation for existing screening companies. There are many companies that have been providing required screening services for years. The FAA has observed their operations and is familiar with these companies. The FAA proposes in § 111.109(k) that companies actively screening at any time during the year before the date of publication of the final rule be able to continue screening after the effective date if they submit applications for provisional certificates within 60 days after publication of the final rule. The FAA would review the applications and issue provisional certificates to those qualified. A company that applied on time and that submitted complete and accurate documentation as required would be able to continue screening unless and until it is issued a denial of its application.

After an existing screening company receives its provisional certificate, it would be subject to a rigorous application process to achieve certification. The company would be required to achieve certification before the expiration of its provisional certificate in order to continue screening. Existing screening companies could apply for certificates any time after they receive provisional certificates but not later than 60 days before the expiration of their provisional certificates.

Duration. In addition to establishing a 12-month provisional certificate and a 60-month certificate (discussed previously), proposed § 111.109(g)(3) would provide that a certificate would expire if a screening company has not provided required screening during the previous 12 months. Under this provision, a company not actively screening and maintaining its proficiency could lose its authority to screen. If the company intends to screen again, it would need to apply for a provisional certificate.

A screening company would have the responsibility for keeping track of its compliance with this requirement and for returning its certificate, as required in § 111.109(h), if it has automatically expired. During the FAA's yearly inspections of screening locations, it intends to compare its list of screening companies with those companies that are performing screening at locations. If a screening company does not appear to have a screening location, the FAA would check with the company to determine when it last conducted screening for a carrier.

Proposed paragraph (h) would require the holder of a screening company certificate that is expired, suspended, or revoked to return the certificate to the Administrator within 7 days. Suspension or revocation of a certificate would follow established procedures for certificates issued by the FAA such as airport, air carrier, and airmen certificates (see earlier discussion of this issue in ''Certificate required'').

Amendment. Under proposed § 111.109(i), a screening company would be required to apply for an amendment to its certificate to change any of the information listed on the certificate, such as the name of the screening company, and/or any names under which it would do business.

Inspection. Under proposed § 111.109(j), screening company certificates would be made available for inspection upon request of the Administrator.

III.I. §§ 111.111; 111.113; and 111.115 Operations specifications

Under proposed § 111.111, screening companies would be required to have approved operations specifications before they could perform screening. Screening companies would prepare operations specifications with FAA guidance. Under proposed § 111.115, during the application process for a provisional certificate, a company would submit its operations specifications to the FAA for approval. Once the operations specifications have been approved, the screening company would not need to obtain subsequent approval when it applies for a certificate or renews its certificate. However, the FAA would review the operations specifications to consider whether changes are needed. Further FAA approval of operations specifications would only be necessary if the screening company seeks to amend its operations specifications. The proposed requirements for approvals and amendments of operations specifications would follow the same process as is currently provided for air carrier security programs.

Under proposed § 111.113, operations specifications would list the following items: the locations at which a company may conduct screening; the types of screening that the company is authorized to perform (persons, accessible property, checked baggage, and cargo); the equipment and methods of screening that the company may employ; the name of the company's screening performance coordinator (SPC) (see discussion in the next section of this preamble); the procedures for notifying the Administrator and any carrier for which the company is performing screening if an equipment or

facility failure makes the performance of adequate screening impracticable; and the curriculum used to train persons performing screening functions. The operations specifications would also be required to contain a statement signed by the person required by § 111.209(b) on behalf of the company, confirming that the information is true and correct. The operations specifications would also contain any other information that the Administrator would deem necessary. Portions of the above items and the format may be provided by the Administrator as standard operations specifications.

Screening companies in most cases would be authorized to screen at all locations in the United States. However, where a special circumstance occurs, the FAA would have the ability to amend a screening company's operations specifications to limit the company's authority to screen at a particular location in accordance with the procedure in § 108.105(c). One example would be where the FAA is deploying new technology that required a high degree of oversight, such as the recent deployments of explosives detection systems. In such a case, the FAA might limit the locations at which a screening company could operate the new technology. Another example would be where a company demonstrates an inability or unwillingness to comply with required procedures at one location, but at other locations is in compliance. The FAA could amend the company's operations specifications to remove the company's authority to operate at the one location. If the company later comes into compliance at that location the operations specifications could be amended to restore its authority to screen there.

Operations specifications would list the types of screening that companies are authorized to perform. This requirement would emphasize the different capabilities and needs of the various companies that perform screening. For instance, cargo screening involves procedures different from those for screening persons. A company's required operations specifications, including its training program, would reflect the type(s) of screening that it would be authorized to perform.

The operations specifications would include the equipment and methods of screening that the Administrator has authorized the company to operate and carry out. Examples include manual searches of items, metal detector inspections of persons, and X-ray inspections. The operations specifications would also include procedures for notifying the Administrator and the carrier(s) for which the company is performing screening in the event that the procedures, facilities, or equipment that the company is using are not adequate for it to perform screening. Each company's operations specifications, including its training program, would specify the methods and equipment on which it was authorized. There shall be a training curriculum for each type of equipment that a company operates in performing screening. The training program curriculum would have to be approved as part of the operations specifications before the company would be certificated as a screening company.

Proposed § 111.113(c) would require a screening company to maintain a complete copy of its operations specifications at its principal business office and at each airport where it conducts security screening. The screening company would also have to ensure that the operations specifications are amended to remain current and made available to the Administrator upon request. The screening company would be required to provide a current copy of its operations specifications to the carrier(s) for which it screens. The screening company would also be required to restrict the availability of information in its operations specifications to those persons with an operational need to know. Persons with an operational need to know are specified in § 191.5(b). The screening company would be required to direct to the Administrator requests for information that is in operations specifications if the requests are from persons other than persons with an operational need to know. These proposed requirements would be necessary to ensure that operations specifications are available to persons who need to know them and at the same time to protect security sensitive information in the operations specifications. Furthermore, these requirements would ensure that carriers have current copies of screening companies' operations specifications for monitoring and auditing purposes.

III.J. § 111.117 Oversight by air carriers, foreign air carriers, or indirect air carriers

Proposed § 111.117(a) would make clear that each screening company holding a certificate under part 111 would be required to allow any air carrier, indirect air carrier, or foreign air carrier for which it performs screening to inspect its facilities, equipment, and records to determine its compliance with part 111, its security program, and operations specifications. The proposed regulation would also require that a screening company allow any carrier for which the company is performing screening to test the screening company's screening personnel using the procedures specified in the applicable security program. This is a natural consequence of the fact that carriers are ultimately responsible for proper screening and must be able to ensure that their screening companies are in compliance and that screening personnel are performing adequately.

Because the carriers are ultimately responsible for screening and contract with screening companies to perform the service on their behalf, the FAA does not consider it essential from a legal standpoint to include proposed § 111.117. However, it appears that inclusion of this section may avoid confusion concerning the roles of the carriers and screening companies. The FAA requests comments on whether to include this section in the final rule.

If a carrier chooses to hold a screening company certificate and to conduct screening at a particular location on its own behalf, it would still have to perform oversight functions. In its capacity as a screening company, it would be responsible for day-to-day operations; in its capacity as a carrier, it would have to audit and test the performance of its screening functions. Any other carrier using that screening location also would be responsible for auditing and testing the carrier in its capacity as a screening company.

In performing oversight responsibilities, the carriers need to know when the FAA discovers significant compliance problems with the screening companies. Currently, when the FAA discovers an alleged violation, it typically brings it to the attention of the appropriate carrier(s) to initiate corrective action as soon as possible. This often is done in a discussion with the station manager or other carrier official at the time of the inspection. Depending on the circumstances, enforcement action may be taken later. The FAA envisions that if it finds an alleged violation committed by a screening company, it would discuss the matter not only with the screening company, but also with the relevant carrier(s).

The FAA also proposes in § 111.117(b) that each screening company shall provide a copy of each letter of investigation and final enforcement action to each carrier using the screening location where the alleged violation occurred. Final enforcement actions include warning letters, letters

of correction, orders assessing civil penalties, and orders of suspension and revocation. The screening company would be required to provide a copy to each applicable carrier's corporate security officer within 3 business days of receipt of the letter of correction or final enforcement action. This proposed requirement would assist the carriers(s) in evaluating the performance of the screening company. Such enforcement actions could include warning notices and letters of correction, civil penalty actions, suspensions or revocations of certificates, cease and desist orders, or other actions. The FAA proposes that a screening company would have to provide copies of these documents to only those carriers for which it conducted screening at the location of an alleged violation, rather than to all carriers for which it conducted screening nationwide. The proposed requirement to provide the copies within 3 business days of receipt would ensure that the carrier(s) receive(s) timely notice.

The FAA considered proposing that the FAA would provide copies directly to the carriers involved. However, the FAA believes that this responsibility more correctly belongs with the screening companies. A screening company should keep the carriers for which it is performing screening informed of the company's compliance status. During its regular inspections of screening companies, the FAA would check to make certain that the screening companies are keeping carriers informed. The FAA requests comments on any alternative means for keeping the carriers informed of their screening companies' compliance.

III.K. § 111.119 Business office

Under the proposal, each certificated security screening company would be required to have a principal business office with mailing address and would be required to notify the Administrator of any address changes. The FAA would not expect all files to be maintained at the business office. Most files would be retained onsite and be available for inspection.

Subpart C—Operations

III.L. § 111.201 Screening of persons and property and acceptance of cargo

The language in proposed § 111.201 is similar to the proposed language contained in § 108.201 for air carriers (Notice No. 97–12). The FAA is not proposing to remove any of the language from proposed § 108.201 or from similar language in § 129.25, because the carriers will remain responsible under statute for screening persons and property. This proposal does, however, include similar provisions under proposed § 111.201, because screening companies are the primary screeners of persons and property in most situations, and they must be aware of and be held accountable for their screening responsibilities.

Under proposed § 111.201(a), each screening company would be required to use the procedures included in its approved screening company security program to inspect each person and his or her accessible property entering a sterile area. Under proposed § 111.201(a), each screening company would also be required to deter and prevent the introduction into a sterile area of any explosive, incendiary, or deadly or dangerous weapon on or about each person or the person's accessible property.

Note that this NPRM also proposes to change the wording in § 108.201(a) and (b) to indicate that the screening procedures, facilities, and equipment may also be described in the screening companies' approved security programs as well as in the air carriers' approved security programs. The FAA expects that differing requirements would appear in one or the other of the programs, depending on the requirement. Similar requirements also appear in proposed § 109.201 for indirect air carriers and in existing § 129.25 for foreign air carriers. These changes are further explained in the detailed proposed rule discussion for parts 108, 109, and 129.

Under proposed § 111.201(b), each screening company would be required to deny entry into a sterile area at a checkpoint to the following: any person who does not consent to a search of his or her person in accordance with the screening system prescribed in paragraph (a) of this section; and any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by paragraph (a) of this section.

Proposed § 111.201(c) would state that the provisions of paragraph (a) of § 111.201, with respect to firearms and weapons, would not apply to law enforcement personnel required to carry firearms or other weapons while in the performance of their duties at the airport; persons authorized to carry firearms in accordance with § 108.213, 108.215, 108.217, or 129.27 of the chapter; and persons authorized to carry firearms in sterile areas under FAA-approved or FAA-accepted security programs.

Under proposed § 111.201(d), each screening company would be required to staff the screening locations that it operates with supervisory and nonsupervisory personnel in accordance with the standards specified in its security program. This language is similar to the language contained in proposed § 108.201(g) of Notice No. 97–12; however, it would be relocated to part 111 because screening companies are responsible for their own staffing. Also, the words ''security screening checkpoints'' would be replaced with the words ''screening locations'' to include screening that is conducted at checkpoints and at other locations.

Under proposed § 111.201(e), each screening company would be required to use the procedures included in its approved security program to inspect checked baggage, or cargo presented for inspection by a carrier, and therefore prevent or deter the carriage of explosives or incendiaries in checked baggage or cargo onboard passenger aircraft. This language is similar to the language contained in proposed § 108.201(h) of Notice No. 97–12; however, it has been amended to more clearly indicate this requirement's applicability to checked baggage and cargo.

III.M. § 111.203 Use of screening equipment

Under proposed § 111.203(a), each screening company would be required to operate all screening equipment in accordance with its approved security program. This equipment would include metal detectors, X-ray systems, explosives detection systems, explosives trace detectors, and any other screening equipment that is approved for use by the FAA. In most cases, the carriers that contract with the screening companies for their screening services own and maintain the equipment and provide it to the screening companies for their use. While screening companies would be responsible for the day-to-day operational testing and operation of the equipment, the carriers would still retain responsibility for the calibration and maintenance of the equipment.

Proposed § 111.203(b)–(d) would contain several X-ray-related requirements that were originally included as part of § 108.205 (see Notice No. 97–12) but which the FAA is proposing to relocate to proposed part 111, because they are functions that screening companies typically carry out. Specifically, some of the language from proposed § 108.205 would be repeated in § 111.203 and amended to apply to screening companies. Proposed § 111.203(b) would state that the

Administrator authorizes certificated screening companies to use X-ray systems for inspecting property under approved screening company security programs if several items are met. A screening company would be required to show that it has established a mandatory program for the initial and recurrent training of operators of the X-ray systems, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of unauthorized weapons, explosives, incendiaries, and other dangerous articles. The screening company also would be required to show that the X-ray systems that it operates meet the imaging requirements set forth in its approved security program. These requirements are currently contained in the carrier standard security programs but would be relocated to the screening standard security program to accompany the relocation of these requirements.

Under proposed § 111.203(c), screening companies would be required to inspect individuals' photographic equipment and film packages without exposure to X-ray or explosives detection systems if requested by the individuals. Proposed § 111.203(d) would require that each screening company comply with any X-ray operator duty time limitations specified in its approved security program.

As will be explained in the detailed proposed rule discussion for parts 108, 109, and 129, all requirements related to the use of X-ray systems would also be extended to indirect air carriers and their screening companies. The proposed § 111.203 requirements above would also apply to indirect air carriers. All remaining requirements related to the use of X-ray systems would remain in parts 108 and 129 and be included in part 109 as carrier responsibilities. These requirements involve conducting radiation surveys, meeting imaging requirements, meeting Food and Drug Administration (FDA) standards and compliance standards regarding FDA defect notices or modification orders, and meeting other equipment-related requirements.

III.N. § 111.205 Employment standards for screening personnel

Under existing regulations, employment standards for screening personnel are provided as requirements for air carriers under § 108.31 (proposed § 108.209), for foreign air carriers under their model security program (MSP), and for indirect air carriers under their security program. Since these requirements include standards regarding the screening personnel to be hired by screening companies, the FAA proposes to relocate them from part 108, the MSP, and the IACSSP to part 111, and assign responsibility for them to screening companies. This would establish one consolidated list of employment standards for all screeners performing screening in the United States.

The consolidation of all employment standards would impose some additional requirements on screeners performing screening for air carriers, foreign air carriers, and indirect air carriers. Under proposed § 111.205(a)(2), two additional requirements would be added for screeners performing screening for air carriers and foreign air carriers, which were incorporated in recent cargo-related security program amendments. First, under proposed § 111.205(a)(2)(i), screeners would have to be able to identify the components that might constitute an explosive or an incendiary. Second, under proposed § 111.205(a)(2)(ii), screeners would have to be able to identify objects that appear to match those items described in all current security directives and emergency amendments. The addition of these proposals and other proposals below would result in the rearrangement of the numbering structure of proposed § 108.209(a)(2) (Notice No. 97–12).

Another proposal under § 111.205(a)(2)(iii) would require that screeners operating both X-ray and explosives detection system equipment be able to distinguish on the equipment monitors the appropriate imaging standards specified in the screening companies' approved security programs. The FAA is proposing to amend this requirement that already exists in part 108 to include explosives detection systems and to change the location of all screener employment standards from the carrier programs to the screening companies' security programs.

Screeners performing screening for foreign air carriers operating their own screening checkpoints in the United States theoretically would have to meet additional standards under this proposal that currently are not required of them. Specific differences from the current MSP standards and this proposal are that these proposed rule requirements would expand the English language requirements, add education requirements, add specific screener evaluation requirements, and provide allowances for special circumstances. Most foreign air carriers, however, use screening checkpoints operated by U.S. air carriers, and all of these foreign air carriers already voluntarily comply with the existing 14 CFR part 108 employment standards to be consistent and to allow for screener shift rotations with screening checkpoints operated by domestic air carriers.

Screeners performing cargo screening may also have to meet an additional standard under this proposal that is not currently required of them. Under proposed § 111.205(a)(1), these screeners would be required to have high school diplomas, general equivalency diplomas, or combinations of education and experience that the screening companies have determined to have equipped the persons to perform the duties of their positions. No other new standards would be required of screeners performing cargo screening.

The FAA may revisit the current screener education requirements after threat image projection (TIP) data becomes available regarding education level as it relates to screener performance. If it appears from the data that different employment standards are appropriate, the FAA would propose such standards for comment and make the supporting data available to the carriers and screening companies.

In addition to relocating the standards, a proposed requirement would be added to § 111.205(a)(4) stating that initial and recurrent training for all screeners shall include screening persons in a courteous and efficient manner and in compliance with the applicable civil rights laws of the United States. The statute requires that FAA rules for passenger screening ensure the courteous and efficient treatment of passengers by air carriers or foreign air carriers or agents or employees of air carriers or foreign air carriers (49 U.S.C. 44903(b)(3)(B)). Further, there are a number of laws requiring air carriers to observe the civil rights of persons (e.g., see 42 U.S.C. 1981, 2000a, and 2000d; and 49 U.S.C. 41310 and 41702). The FAA and the DOT's Office of the Secretary have received reports that some screeners were discourteous and might have discriminated against certain individuals. The FAA proposes to require that in initial and recurrent training, screeners receive instruction in screening in a courteous and efficient manner and in compliance with the civil rights laws. For instance, it would not be appropriate for a screener to subject a person to increased inspection based on the screener's view that the person appears to be of an ethnic group that the screener considers of a higher threat to air transportation. Further, while different methods are required to screen persons in wheelchairs, persons with implanted medical devices that

may alarm the metal detector, and other persons with certain disabilities, screeners are required to be courteous and to avoid violating the civil rights laws while they conduct the screening. (See, e.g., 49 U.S.C. 41705 and 14 CFR part 382, and § 382.49 in particular.) Training would help ensure that screeners are aware of their duties in this regard.

Proposed § 111.205(a)(5) would require persons with supervisory screening duties to have initial and recurrent training that includes leadership and management subjects. In response to noted deficiencies in training for checkpoint security supervisory personnel and a determination that they lacked communication skills training, leadership development, and general supervisory skills training, the FAA developed the Supervisor Effectiveness Training (SET) Program which focuses on communication and leadership skills. While the SET program is intended to serve as a model for teaching these supervisory subjects, it is not required at this time. However, the FAA intends to propose for comment specific standards that the leadership and management training for checkpoint supervisors shall meet in the SSSP, and the SET Program would meet those standards.

The FAA is seeking comments on whether additional or different selection and employment standards are appropriate to improve the screening companies' ability to hire qualified, effective screeners.

III.O. § 111.207 Disclosure of sensitive security information

Certain information related to civil aviation security must be protected from unauthorized disclosure because it could be used to attempt to defeat the security system if it falls into the wrong hands. In § 191.7 the FAA has designated this information as sensitive security information (SSI). SSI includes information about security programs, technical specifications of certain screening equipment and objects used to test screening equipment, and other information. Under § 191.3, the FAA does not disclose such information. Under § 191.5, carriers are required to protect SSI from disclosure, including disclosing it to only those with a need to know.

Some SSI must be revealed to persons being trained to be screeners. There is a high rate of turnover among screener trainees, however. A large portion of the trainees do not complete training. It is advisable to avoid providing SSI to those who will never need it to perform security duties. The FAA therefore is proposing that the appropriate steps of the employment history, verification, and criminal history records checks that air carriers or airport operators are required to conduct are carried out before trainees are given SSI during training.

Airport operators are required to ensure that persons with unescorted access to security identification display areas (SIDA) have their checks completed beforehand (see § 107.31). The checks may be carried out by the airport operators or the air carriers. Air carriers are required to ensure that checks are completed on certain persons, including persons who screen passengers or property that will be carried into the cabins of aircraft (see § 108.33; to appear as § 108.221 under Notice No. 97–12). Most persons who screen cargo and checked baggage are either also qualified to screen persons and property that will be carried into aircraft cabins, and/or have unescorted access to SIDA's and therefore will be subject to the checks in § 107.31 or 108.33.

The checks required under current § 107.31 or 108.33 are in two parts. In most cases, only part 1 is required. Part 1 includes the individuals providing certain information on applications, with the air carriers or airport operators verifying selected parts of that information. If certain conditions (triggers) are discovered during part 1 (such as an individual is unable to support statements made on his or her application form), the air carriers or airport operators shall accomplish part 2 of the checks, which involves criminal history records checks based on fingerprints.

The FAA proposes under § 111.207 that each screening company would be required to ensure that no SSI is provided to a screener trainee who will be required to have an employment history verification until part 1 of the trainee's check is completed. If the individual has a history of a disqualifying crime set forth in § 107.31 or 108.33, that individual would not be permitted to screen persons or property to be carried into aircraft cabins and thus would not be eligible to be a screener. Under the statute, if a part 2 criminal history records check is needed, an individual may be employed as a screener until his or her check is completed if the person is subject to supervision (see 49 U.S.C. 44936(a)(1)(D)). This means that the person would be permitted to receive SSI unless or until his or her records check reveals a disqualifying crime.

The FAA considered duplicating these employment history and verification requirements in proposed part 111 for screening companies but did not because the statute makes the air carriers responsible for the checks; only the air carriers, not the screening companies, can obtain the criminal histories that may be called for under proposed § 108.221 (current § 108.33). If an airport operator or an air carrier completes part 1, the screening company would have to receive confirmation from one of them indicating that it has been completed. Many airport operators or air carriers authorize screening companies to obtain applicants' part 1 employment history information and verify the applicants' most recent 5 years of employment history. In these situations, the airport operators or air carriers are responsible for ensuring that the screening companies are complying with these requirements.

III.P. § 111.209 Screening company management

This proposed section would require that each screening company have sufficient qualified management and technical personnel to ensure the highest degree of safety in its screening. This is based on a requirement in § 119.65(a) that applies to air carriers operating under part 121.

Proposed § 111.209(b) would require that each screening company have a screening performance coordinator (SPC). The SPC would, at a minimum, be responsible for monitoring the quality and performance of screening at each screening location and ensuring that corrective action is taken to remedy any performance deficiencies. The SPC would also serve as the primary point of contact for the company for FAA and carrier communications regarding security-related issues. In most cases the FAA anticipates that the SPC's would be responsible for managing the screening operations for their companies. Management experience, technical training, and knowledge of screening-related information would be critical to SPC's effectiveness in their positions.

Under the proposed rule, an SPC would be required to have successfully completed the initial security screener training course, including the X-ray interpretation portion of the course and the end-of-course FAA exam. The SPC's completion of initial security screener training would ensure that he or she would have formal training in the screener's job. The SPC would not be required to complete the on-the-job portion of the training, because he or she would not actually perform required

screening, and it would not be necessary for the SPC to accomplish the same level of proficiency as that required of a screener. The FAA requests comments regarding which portions of the training that the SPC's should be required to successfully complete in order to manage screening operations effectively.

Furthermore, to ensure that the SPC's have management skills and practical experience in the aviation security environment necessary to act as SPC's, proposed § 111.209(b)(1)(i) would require that each SPC have at least 1 year of supervisory or managerial experience within the last 3 years in a position that exercised control over any aviation security screening required under part 108, 109 or 129. This requirement is intended to provide SPC's with solid experience and knowledge bases regarding managing and coordinating aviation screening operations, including knowledge to apply new procedures and technologies. The proposal would include exceptions in § 111.209(d) for those who screen only cargo for indirect air carriers (IAC's) under part 109. During the 3-year period following the publication of the final rule, a person who does not satisfy the experience requirements of § 111.209(b)(1)(i) would be able to serve as SPC for IAC screening operations if authorized to do so by the Administrator. IAC's have not been involved in screening for very long, and there might be few individuals who could meet this standard at first. In deciding to grant exceptions, the FAA would consider such factors as individuals' other management experience, nonmanagement screening experience or training, and security experience other than aviation screening.

The name and business address of an SPC would be listed in the screening company's operations specifications. If a change in SPC's or a vacancy occurs, the screening company would be required to notify the Administrator within 10 days of the change under proposed § 111.209(b)(2).

Under proposed § 111.209(c), each SPC would be required to have a working knowledge of parts 111 and 191 and part 108, 109, or 129, as applicable; his or her screening company's security program; his or her screening company's operations specifications; relevant statutes; and relevant technical information or manuals regarding screening equipment, security directives, advisory circulars, and information circulars on aviation security. This proposed requirement would help to ensure that each SPC has a satisfactory understanding of the fundamental regulatory and statutory requirements for screening operations and that he or she understands the challenges involved with screening. Well-trained, experienced SPC's would be better able to manage safe, effective, professional screening operations. These requirements are based on the management requirements in § § 119.65–119.71 for air carriers. The requirements are consistent with comments received on the ANPRM that stated that management personnel should be required to have aviation screening experience, training, and knowledge.

III.Q. § 111.211 Screening company instructor qualifications

As discussed in II.H., it is increasingly important that screeners be well qualified and receive proper training from qualified instructors. Under proposed § 111.211, screening company instructors would have to have a minimum of 40 hours of actual experience as security screeners making independent judgments and pass the FAA screener knowledge-based and performance tests for each type of screening to be taught and for the procedures and equipment for which the instructors would be providing training. Each instructor would also have to be briefed regarding the objectives and standards of each course taught.

The emphasis with this proposal is to ensure that screening companies employ instructors with important minimum qualifications. Requiring screening instructors to have actual experience as screeners would allow them to better understand the challenges involved in screening and to relay helpful, realistic advice and information to screener trainees. Requiring instructors to pass the FAA screener knowledge-based and performance tests in each area of screening taught would help ensure that the instructors have attained the knowledge and, as applicable, the skills and abilities needed to be effective as instructors. The FAA expects that screening companies would hire instructors who are knowledgeable about the screening process, who are able to demonstrate correctly screening procedures to trainees, and who can effectively and thoroughly communicate screening-related objectives and lesson plans to trainees. Conducting on-the-job training would keep instructors proficient regarding screening technologies and procedures.

III.R. § 111.213 Training and knowledge of persons with screening-related duties

The language in proposed § 111.213 mirrors parts of the proposed language contained in § 108.227 for air carriers (Notice No. 97–12). Under proposed § 111.213(a), no screening company would be permitted to use any screener, screener-in-charge, or checkpoint security supervisor unless that person had received training as specified in its approved screening company security program, including the responsibilities in § 111.105. Under § 111.213(c), each screening company would be required to ensure that screeners, screeners-in-charge, or checkpoint security supervisors have knowledge of the provisions of part 111, the screening company's security program, and any applicable security directive (SD), emergency amendment (EA), and information circular (IC) information to the extent that such individuals need to know this information to perform their duties.

Proposed §§ 111.213(b) would require that each screening company submit its training program for screeners, screeners in charge, and checkpoint security supervisors to the Administrator for approval. Each training program should address the subject material contained in the security program's training and testing standards. The FAA proposes to create a performance-based training environment where screening companies would be expected to train their screening personnel to pass specific tests developed by the FAA. The FAA proposes to do away with the hourly training requirements for initial and recurrent training and give screening companies the flexibility to train their screeners using their own FAA-approved training programs. Screening companies would be responsible for ensuring that their trainees are able to pass an FAA knowledge-based and, if applicable, X-ray interpretation test at the end of their initial training and that their screening personnel are meeting performance standards thereafter (see proposed § 111.215 for discussion regarding FAA tests). The FAA testing standards would encompass the subjects currently outlined in the Air Carrier Standard Security Program and might include additional standards regarding, for example, operating new screening technologies. The testing standards would differ for tests of persons who will screen persons and accessible property, checked baggage, and cargo, because each type of screening has some different features. As discussed above,

the FAA is developing computer-based instruction and has made this available for use by the industry.

In addition to the testing standards, the Screening Standard Security Program also would contain a list of subjects and types of training that the FAA would require that screening companies brief and demonstrate to their trainees. Trainees might not be tested on all of the subjects, but the information would be critical to their positions and performance. Examples of training standards would be demonstrating effective handwanding and manual search techniques, demonstrating a variety of improvised explosive device configurations, and briefing trainees on the definition of sensitive security information (SSI) and why SSI must be protected.

III.S. § 111.215 Training tests: requirements

This proposed section would introduce several new requirements all related to testing screeners at the completion of their classroom training sessions. The provisions would impose more control and consistency in the training environment, emphasize the importance of proper training and testing, and promote professionalism by both trainees and instructors. The proposals under this section are similar to other FAA regulations related to testing, such as those required for pilots and flight instructors under 14 CFR part 61. They are designed to help ensure that screener trainees have attained the knowledge and skills that they need to perform their jobs effectively.

Currently, air carriers can design and administer their own written tests for screeners. The tests usually consist of approximately 20 basic multiple-choice questions (the knowledge-based portion), and the air carriers have latitude in choosing the subject matter to be addressed and in designing the questions. The performance-based portion of the tests often consists of X-ray interpretation scenarios using overhead slides.

Proposed § 111.215(a) would require that each screener trainee pass one standardized FAA screener readiness test for each type of screening to be performed (persons, accessible property, checked baggage, and cargo) and for the procedures and equipment to be used prior to beginning on-the-job training. Since most screeners conduct screening of persons, accessible property, and checked baggage, the FAA envisions designing one test to address all of these types of screening. Since cargo screening involves some unique factors and does not involve screening persons, the FAA would most likely develop a separate test for cargo screeners. These standardized tests would address the traditional methods of screening and equipment used to conduct screening, such as metal detector devices, hand wand devices, and X-ray systems. The standardized tests might also encompass such explosives detection devices as explosives trace detection (ETD) devices. For more complex explosives detection equipment, such as explosives detection systems (EDS), an additional FAA knowledge-based and performance test would be required before the screeners could operate that equipment.

Proposed § 111.215(b) would require that each screening company ensure that each screener trainee completes 40 hours of on-the-job training and passes an FAA on-the-job training test before exercising independent judgment as a screener. Screeners would have to successfully pass that test before qualified supervisory-level individuals could sign the certification statements in the screeners' training and qualification records. The FAA envisions that this on-the-job training test would be a computer-based test that is similar to the image interpretation portion of the FAA screener readiness test, but that it might require a higher score. The test would supplement all realistic carrier testing required before screeners are permitted to make independent judgments. Applicants for pilot certificates under part 61 and mechanic certificates under part 65 must also pass FAA knowledge and performance tests.

Under proposed § 111.215(c), each screening company would be required to ensure that each screener passes an FAA review test at the conclusion of his or her recurrent training. The written tests that are currently administered at the conclusion of recurrent training are required by the FAA and are designed by the carriers or screening companies; screening companies would now be required to provide their screeners with FAA recurrent tests, and carriers would be required to monitor the testing and grading process.

The specific requirements and guidelines for the tests proposed under § 111.215(a), (b), and (c) would be outlined in the screening companies' security programs. Using the same tests and grading them the same way throughout the country would ensure that trainees all meet the same, appropriate standards before making independent judgments and would promote uniformity among all screeners.

Currently, many screening companies administer end-of-course knowledge-based tests to screener trainees in a paper format and administer the performance tests to trainees using overhead slides. This increases opportunities for cheating, because many screener trainees receive the same versions of the tests and because classes as a whole are usually interpreting the X-ray images at the same time. Instances have occurred where trainees or instructors have helped other trainees answer test questions or interpret X-ray images.

Proposed § 111.215(d) would address this issue by requiring that each screening company use an FAA computer-based test to administer the FAA tests for screener readiness, on-the-job training, and recurrent training unless otherwise authorized by the Administrator. This proposal would standardize the screener testing process, provide a unique mix of challenging and relevant test questions for each screener, discourage the sharing of test information, provide X-ray images for the X-ray interpretation portion of the test that are more like those on an actual X-ray machine, and automatically score the trainees' responses. The questions and interpretation images would be varied for each trainee (making it impossible to copy from one another), but would always address the key subjects contained in the testing standards. The FAA is currently developing these automated tests based on existing requirements for screeners. The tests are being designed to be user friendly and easily loaded onto standard personal computers to minimize costs and maximize flexibility.

Proposed § 111.215(e) would require each screening company to ensure that each test that it administers under § 111.215(a) and (c) is monitored by an employee of the carrier for which it screens. When the screening company plans to administer a test to screener trainees it would be responsible for requesting that the applicable carrier(s) provide a test monitor during the entire testing and grading process. Each applicable carrier would be responsible for providing a test monitor upon request and ensuring that the test monitor meets the qualifications contained in proposed § 108.229, 109.205, or 129.25(p) and the supporting requirements in the screening company's security program. (See section IV.I. regarding monitoring of screener training tests and sharing of carrier responsibilities.)

III.T. § 111.217 Training tests: cheating and other unauthorized conduct

Proposed § 111.217 is included to emphasize that cheating is not permitted on any training test

administered to or taken by screening personnel, to include test monitors, screeners, screeners-in-charge, checkpoint security supervisors, and screening performance coordinators. Under proposed § 111.217, no person may copy or intentionally remove a knowledge-based or performance test under this part; give to another or receive from another any part or copy of that test; or give help on that test to or receive help on that test from any person during the period that test is being given. In addition, no person may take any part of that test on behalf of another person; use any material or aid during the period that test is being given; or intentionally cause, assist, or participate in any act prohibited by this paragraph except as authorized by the Administrator. These requirements are similar to the testing regulations set forth in § 61.37 for pilots. These prohibitions apply ''except as authorized'' by the FAA, to provide for the possibility that in the future the FAA would authorize such conduct as the use of certain outside materials. For instance, in pilot exams, the applicants may bring flight computers to perform required calculations.

Any instances reported to the FAA involving allegations that screening companies or screening company employees are permitting cheating on tests would be investigated, and those companies or individuals involved in the incidents could be held accountable. It would be particularly important that the test monitors explain the consequences of cheating on tests to their trainees and be alert to any occurrences of cheating. If an instance of cheating occurs, a test monitor would be required to declare the test invalid and inform appropriate screening company and carrier management officials of the incident. FAA special agents also would regularly monitor screening company testing.

III.U. § 111.219 Screener letter of completion of training

Throughout this proposal, the FAA has sought ways to more effectively train, challenge, and motivate screeners and their supervisors. The following proposal would provide screeners and supervisors with verification of their training, and may provide a modest means of motivation by encouraging pride in the employees regarding their accomplishments. Under proposed § 111.219, each screening company would issue letters of completion of training to screeners, screeners-in-charge (SIC), and checkpoint security supervisors (CSS) upon each successful completion of approved initial, recurrent, or specialized courses of training. Specialized training would encompass, for example, training for explosives detection equipment. These letters of completion would not serve as certification for screeners, CSS's, and SIC's, but would provide them with records of their specific training accomplishments. The FAA believes that requiring screening companies to issue letters of completion to screeners and screener supervisors for their successful completion of training would help enhance the professionalism of this critical security job.

Each letter of completion of training would be required to contain the trainee's name, course of training completed and date of completion, name of the screening company providing the training, and a statement signed by a GSC, CSS, or SIC indicating that the trainee has satisfactorily completed each required stage of the approved course of training and the associated tests. Each letter of completion would also be required to indicate the types of screening that the screener was trained to perform (persons, accessible property, checked baggage, and/or cargo) and the equipment and methods of screening that the screener was trained to operate and carry out. Examples of equipment would be X-ray systems and EDS. An example of a method of screening would be a manual search.

Screening companies could include letters of completion of training as part of their required screener and screener supervisor training and qualification records, but the letters would not serve as substitutes for the remaining records requirements.

III.V. § 111.221 Screener and supervisor training records

Under proposed § 111.221, a screening company would be required to forward training records for a screener, screener-in-charge, or checkpoint security supervisor to another screening company upon the request of the employee. The other screening company would be able to use the employee without fully retraining him or her if it provides training on the procedures that differ from those of the previous company. In the event that a screening company ceases operations at a site, it would also be required to return its original screener records to the carrier for which it was conducting screening. These improvements would increase mobility for screeners, screeners-in-charge, and checkpoint security supervisors. They would also ensure that training documentation would not be lost if a screening company leaves a location. These proposed requirements are consistent with several comments received on the ANPRM which stated that making screener personnel and training files transferable would enhance professionalism.

Proposed § 111.221(f), in particular, would require that training, testing, and certification records be made available promptly to FAA special agents upon request and be maintained for a period of at least 180 days following the termination of duty for a screener, screener-in-charge, or checkpoint security supervisor. Test records would include all tests to which the employee was subjected, not just those satisfactorily completed. Carriers currently are required to maintain these records under their security programs. Including this requirement as part of proposed part 111 would result in transferring the responsibility to maintain the records to screening companies, who often already maintain the records, and would standardize the length of time that records have to be maintained.

III.W. § 111.223 Automated performance measurement and standards

As discussed in section II.I., the FAA is proposing to enhance the FAA's, carriers', and screening companies' abilities to measure the performance of screening locations and to set FAA standards for their operation. Under proposed § 111.223(a), each screening company would be required to use a threat image projection (TIP) system for each X-ray and explosives detection system that it uses as specified in its security program to measure the performance of individual screeners, screening locations, and screening companies. It is important to note that this requirement would not require screening companies to install physically the TIP systems on the X-ray systems that they operate. Rather, it would require screening companies to operate the TIP systems that the carriers have installed in accordance with the procedures contained in their screening company security programs. The security program procedures would specify usage procedures, log on/log off procedures for each screener, and any data collection requirements. Proper operation of the TIP units and collection of data would be critical to measuring accurately the performance of screening companies.

Under proposed § 111.223(b), each screening company would be required to meet the performance standards set forth in its security program. These

performance standards would be established through the notice and comment procedures for amending security programs. The FAA envisions establishing a range of performance that all screening companies would be required to fall within to be considered effective at detecting possible threats. If a screening company falls short of the minimum performance standards, it may be required to carry out additional security measures to maintain the required level of security, depending on the circumstances involved, and could ultimately lose its FAA certification if its performance does not improve (see discussion of possible additional security measures in section II.I.).

The FAA expects that each screening company would regularly monitor its overall performance as well as its individual screeners' performance and take corrective actions as necessary. The FAA also expects that each carrier that contracts with a screening company would regularly monitor that screening company's performance. These oversight responsibilities would be outlined in the carriers' security programs, and the carriers would be responsible for working with their screening companies to remedy any performance problems.

The FAA would collect and analyze screening company performance data regularly to monitor performance and to determine whether screening companies and carriers are in compliance with the required performance standards. The FAA would also closely review data regarding screening companies' performance at the time of initial certification (if historical performance data are available) and before each subsequent certification renewal.

The FAA proposes to require that TIP systems be installed on X-ray and explosives detection systems at the U.S. screening locations specified in the carriers' security programs. The FAA proposes to require that TIP systems be installed initially at the busiest screening locations. The specific screening locations affected by this requirement would be described in the carriers' security programs. The FAA then would phase in requirements to install TIP systems at the remaining U.S. screening locations where property is screened. The process of phasing in requirements for TIP systems would allow the FAA to address promptly the higher threat airports and would allow realistic timeframes for updating older equipment to make it TIP-compatible. The FAA already has installed TIP systems at many of the Nation's major airports and will advocate additional installations at other airports and cargo facilities. During the phase-in process, the FAA will continue to measure screening companies' performance through testing and assessments.

IV. Proposed Revisions to Parts 108, 109, and 129

The following section discusses the detailed rule proposals for parts 108, 109, and 129. The proposed additions for part 109 have been organized in a new regulatory format similar to that of Notice No. 97–12 for part 108, for clarity and consistency.

IV.A. §§ 108.201(h); 109.203(a); and 129.25(k) Certification requirement

Proposed new § 108.201(h) would require that each carrier required to conduct screening of persons and property under a security program hold a screening company certificate issued under part 111 if the carrier will conduct the screening or use another screening company certificated under part 111 to conduct such screening.

Proposed new § 109.203(a) would require that each indirect air carrier that elects to conduct screening of property under a security program hold a screening company certificate issued under part 111 or use another screening company certificated under part 111 to conduct such screening.

Proposed § 129.25(k) would require that each foreign air carrier required to conduct screening of persons and property under a security program either hold a screening company certificate issued under part 111 or use a screening company certificated under that part for screening locations within the United States.

Proposed § 108.201(h), 109.203(a), and 129.25(k) would all state that FAA-certified canine teams are not required to be operated by certificated screening companies. This statement is included to provide clarification for situations where FAA-certified canine teams are used to conduct screening.

IV.B. §§ 108.5 and 109.5 Inspection authority

Proposed § 108.5, Inspection authority, would be amended to require that each air carrier also allow the Administrator, including FAA special agents, to make any inspections or tests at any time or place to determine screening company compliance with the new part 111 of this chapter and the carrier's screening company security program(s). Proposed § 108.5 also would be amended to require that an air carrier provide evidence of compliance with the new part 111 of this chapter and its screening company security program(s) at the request of the Administrator.

Similar inspection authority language would also be proposed as § 109.5 to be consistent with the requirements in §§ 108.5 and 119.59. This proposed parallel section would not be a new requirement, because it is already required by statute. Rather, the proposed section is intended to resolve any confusion regarding the FAA's statutory authority to conduct inspections and tests under title 49, U.S.C., Subtitle VII.

IV.C. §§ 108.103(b); 109.103(b); and 129.25(c) Security program form, content, and availability

Proposed § 108.103 in Notice No. 97–12 sets forth the form, content, and availability of security programs required under part 108. Proposed § 108.103(b) of Notice No. 97–12 lists items to be included in the security programs. The proposed rule in this notice would add to that list of items in Notice No. 97–12 two new items: a description of how an air carrier would provide oversight to each screening company performing screening on its behalf, and a description of how the air carrier would evaluate and test the performance of screening. The proposed rule would also add comparable requirements as proposed §§ 109.103(b)(4) and (5) and 129.25(c)(5) and (6). These requirements also would apply to indirect air carriers that elect to perform the screening functions themselves.

The proposed requirement regarding a description of carrier oversight is based on proposed §§ 108.201(j), 109.201(c), and 129.25(m), which would require that each carrier required to conduct screening under parts 108, 109, and 129 provide oversight to each screening company performing screening on behalf of the carrier. The specific oversight requirements would be included in the carrier's security programs.

The proposed requirement regarding a description of testing and evaluation procedures would include the process that the carrier would use to collect and evaluate automated screener and screening company performance data on a regular basis as required in proposed § 111.223. Requiring the air carriers, indirect air carriers, and foreign air carriers to provide these descriptions would help to ensure that the carriers adequately oversee and manage the performance of screening companies employed by them.

In addition to adding the new requirements above to part 109, the proposal would rename the current § 109.3 as § 109.103 and reorganize it to parallel § 108.103. Proposed

§ 109.103(a) would state several overall requirements for the indirect air carrier security program. All of the requirements are stated in the current § 109.3 with the exception of one new requirement. This proposed addition would require indirect air carriers to state in their programs that upon receipt of an approved security program or security program amendment from the FAA, the indirect air carriers shall acknowledge receipt of it to the Assistant Administrator in writing and signed by the indirect air carriers or persons delegated authority in this matter within 72 hours. This is a proposed requirement in § 108.103 and would also be applicable to indirect air carriers.

Section 109.103(b) would list all of the items that the indirect air carrier security programs shall include. In addition to adding the two description requirements to § 109.103(b), the proposal would also require that the security programs include the following: the procedures and descriptions of the facilities and equipment used to perform screening functions specified in § 109.201; and the procedures and descriptions of the equipment used to comply with the requirements of § 109.207 of this part regarding the use of X-ray systems should indirect air carriers elect to perform screening functions. These requirements would be added to support the new cargo screening requirements, with an emphasis on X-ray systems.

Section 109.103(c) would describe how the indirect air carriers should maintain their programs and to whom they should make security program information available. All of these requirements already are required by the current § 109.3.

IV.D. §§ 109.105 and 129.25(e) Approvals and amendments of security programs

The proposal would reorganize the current regulatory text of §§ 109.5 (proposed § 109.105) and 129.25(e)(2), (3), and (4) to clarify the requirements and make them consistent with the organization of § 108.105. The only substantive changes would affect indirect air carriers under proposed § 109.105(c) and (d). Section 109.105(c) would allow indirect air carriers to petition the Administrator to reconsider a notice of amendment if the petitions are submitted no later than 15 days before the effective date of the amendment. Section 109.105(d) would allow indirect air carriers the opportunity to file petitions for reconsideration under § 109.105(c).

IV.E. §§ 108.201(i), (j), and (k); 109.203(b), (c), and (d); and 129.25(l), (m), and (n) Responsibilities of carriers and screening companies

Proposed new §§ 108.201(i), 109.203(b), and 129.25(l) would require each carrier to ensure that each screening company performing screening services on the carrier's behalf do so consistent with part 111, the screening company's security program, and the screening company's operations specifications. Proposed new §§ 108.201(j), 109.203(c) and 129.25(m) would require each carrier required to conduct screening to oversee each screening company performing screening on its behalf as directed in the carrier's security program. The requirements for oversight would all be listed in the ACSSP, MSP, and IACSSP. For example, the security programs may require periodic audits by the carriers to look at different aspects of the screening companies' operations. The frequency of such audits and the specific aspects to be audited would be described in the security programs and could be tailored to the different types of screening operations conducted. The FAA recently issued an amendment to the ACSSP that meets the intent of this proposal for air carriers. The proposed amendment strengthens checkpoint auditing and testing requirements for ground security coordinators.

As part of their oversight responsibilities, each carrier required to conduct screening under a security program would be required under proposed §§ 108.201(k), 109.203(d), and 129.25(n) to maintain at least one complete copy of each of its screening companies' security programs at its principal business office; have available complete copies or the pertinent portions of its screening companies' security programs or appropriate implementing instructions at each location where the screening companies conduct screening for the carrier; and make copies of its screening companies' security programs available for inspection by an FAA special agent upon request. Each carrier would also be required to restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs to persons with a need to know as described in part 191 of this chapter, and refer requests for such information by other persons to the Administrator.

These proposed requirements are consistent with several comments on the ANPRM that stated that air carriers must ensure that the screening companies are conducting screening on their behalf in compliance with the applicable security programs and all other regulations. Some commenters also stated that while air carriers should retain responsibility for checkpoint screening activities, certificated screening companies should be directly responsible for their own regulatory compliance.

IV.F. §§ 108.201(l) and 129.25(o) Public notification regarding additional security measures

As discussed in section III.W., the FAA envisions that performance standards eventually may be established using TIP data. If a screening company were to fall short of the minimum standards it may be required to carry out additional measures to maintain the required level of security. These measures may result in slowing the screening operation at that location. Proposed §§ 108.201(l) and 129.25(o) would be added to require that each carrier required by the FAA to implement additional security measures to maintain system performance notify the public by posting signs at affected locations as specified in its security program. This would explain to the public why it might take longer than usual for screening to be accomplished and why baggage may be subjected to additional searches. This is further discussed in section II.I.

IV.G. §§ 108.205; 109.207; and 129.26 Use of X-ray systems

Proposed § 108.205 would be amended to require that air carriers use X-ray systems in accordance with their approved security programs and their screening companies' approved security programs. Both programs are included here, because the air carriers would be required to ensure that the X-ray systems meet the standards for cabinet X-ray systems issued by the Food and Drug Administration (FDA), have had radiation surveys as required, have met the required imaging requirements at the time of initial installation and when the systems are relocated, are in full compliance with any defect notices or modifications orders issued for those systems by the FDA, and meet other equipment-related requirements as described in proposed § 108.205. However, an air carrier would also be responsible for ensuring that its screening companies comply with the X-ray-related requirements to be relocated to the Screening Standard Security Program. Specifically, § 108.205(a)(2), which requires that a program for initial and recurrent training of operators of X-ray systems be established, would be relocated to

§ 111.203. Screening companies would assume responsibility for training their employees under this proposed rule. Section 108.205(a)(3) would then be renumbered to read (a)(2) and would be revised to indicate that the screening companies' security programs would contain the imaging requirements. Also, § 108.205(h), which would require each air carrier to comply with X-ray operator duty time limitations, would be relocated to § 111.203.

A new paragraph (h) would be added to state that unless otherwise authorized by the Administrator, each air carrier shall ensure that each X-ray system that it uses have a functioning threat image projection (TIP) system that meets the standards set forth in its security program. The FAA has worked with some X-ray system vendors to develop TIP systems and acceptable TIP standards and will continue to do so; these TIP systems currently are being used in several U.S. airports.

The FAA, carriers, and screening companies would use the data gathered from the TIP systems to measure performance of the screening location and screeners, as described in section II.I. It therefore is necessary that the TIP systems be functioning properly and that the carriers use them as specified in their screening companies' security programs at all times unless they obtain amendments from the Administrator. Such amendments could be approved by the FAA for a limited time period if, for example, there were not enough X-ray systems with functioning TIP systems available for necessary screening operations at particular screening locations.

Paragraph (h)(1) would state that automated X-ray TIP data will be collected as specified in the air carriers' security programs and in the responsible screening companies' security programs. Paragraph (h)(2) would state that air carriers shall make X-ray TIP data available to the FAA upon request and shall allow the FAA to download TIP data upon request.

Section 129.26 would contain proposed amendments similar to those described previously for § 108.205. Section 129.26(a)(3), which requires that a program for initial and recurrent training of operators of X-ray systems be established, would be relocated to § 111.203. Screening companies would assume responsibility for training their employees under this proposed rule. Section 129.26(a)(5) would then be renumbered to read (a)(3) and would be amended to indicate that the imaging requirements for X-ray systems will now be set forth in the approved Screening Standard Security Program rather than in the foreign air carriers' security programs.

Currently, § 129.26(a)(4) requires foreign air carriers using X-ray systems to establish procedures to ensure that all operators of the systems be provided with individual personal dosimeters to measure exposure to X-rays and that they evaluate them every month. The FAA is proposing to omit this requirement, as was also proposed in Notice No. 97–12 for part 108. In 1975, the FAA first adopted rules regarding the use of X-ray machines to screen accessible property. At that time, the use of X-ray systems for this purpose was relatively new, and the FAA took a number of steps to evaluate the safety and environmental impacts of these systems. Although the experts who submitted comments did not find it necessary for operators of the equipment to wear dosimeters, the FAA's rules included such a requirement. The FAA now proposes to remove this requirement based on the determinations of those agencies with the expertise.

The FAA proposes to add a new paragraph as § 129.26(a)(4) that would parallel the proposed new paragraph (h) in § 108.205. Paragraph (a)(4) would state that unless otherwise authorized by the Administrator, each foreign air carrier shall ensure that each X-ray system that it uses has a functioning threat image projection system that meets the standards set forth in its security program. The FAA, carriers, and screening companies would use the data gathered from the TIP systems to measure performance of the screening location and screeners, as described in section II.I. Paragraph (a)(4)(i) would state that automated X-ray TIP data will be collected as specified in the SSSP and the MSP. Paragraph (a)(4)(ii) would state that foreign air carriers shall make X-ray TIP data available to the FAA upon request and shall allow the FAA to download their TIP data upon request.

Proposed § 109.207 would be added to provide regulations on the use of X-ray systems consistent with the requirements of proposed § 108.205 and § 129.26. These requirements are a slightly edited version of rule language in proposed § 108.205, with minor differences related to the unique nature of screening cargo.

IV.H. §§ 108.207 and 129.28 Use of Explosives Detection Systems

Because most screening-related procedures would be moved to the Screening Standard Security Program, proposed § 108.207 would be reworded to state the following: When the Administrator shall require by an amendment under § 108.105 of this part, each air carrier required to conduct screening under a security program shall use an explosives detection system that has been approved by the Administrator to screen checked baggage on each international flight in accordance with the air carrier's and its screening company security programs.

This proposal would designate this revised paragraph as paragraph (a), and create a paragraph (b) to state that unless otherwise authorized by the Administrator, each air carrier shall ensure that each explosives detection system that it uses has a functioning TIP system that meets the standards set forth in its security program. The FAA is working with explosives detection system vendors to develop TIP systems and to establish acceptable standards similar to those being developed for X-ray systems. The FAA would use the data gathered from the TIP systems to measure performance of screening locations and screeners, as described in section II.I. Paragraph (b)(1) would state that automated explosives detection system TIP data will be collected as specified in the air carriers' and screening companies' security programs. Paragraph (b)(2) would state that air carriers shall make explosives detection system TIP data available to the FAA upon request and shall allow the FAA to download their TIP data upon request.

A new § 129.28 would also be added to part 129 to extend the TIP requirements for explosives detection systems to foreign air carriers. The language in this proposed addition would be similar to the proposed revised language for § 108.207 but would require foreign air carriers to comply with their security programs and their screening companies' security programs.

IV.I. §§ 108.229, 109.205, and 129.25(p) Monitoring of Screener Training Tests

Proposed new §§ 108.229, 109.205, and 129.25(p) would require that each carrier monitor each screener training test required under § 111.215(a) and (c) for all screening companies that conduct screening on its behalf in accordance with its security program. As discussed in section II.H., this proposed requirement is intended to increase carrier involvement with the training and testing processes and to help deter possible cheating. It is one of many proposals in this NPRM intended to emphasize how critical it is that screeners individually demonstrate a fundamental knowledge of screening-related information and that they meet

the standards that are needed for them to perform their screening responsibilities effectively and without inappropriate assistance.

The FAA does not intend to impose unrealistic burdens on carriers with this requirement. In a situation where multiple carriers contract with one screening company, one carrier could be designated to monitor the screener tests, or the responsibility could be rotated among all of the responsible carriers. The FAA is not proposing to require that carriers monitor the tests under proposed § 111.215(b) because of the logistical difficulties involved with screeners' completing their 40 hours of on-the-job training at varied times. In this way, screening companies would have added flexibility in administering these automated on-the-job training tests to their screening personnel.

Each test monitor would be required to meet specific qualifications, which are listed in the three proposed carrier sections. A test monitor would have to be an employee of a carrier who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor. However, if the carrier is unable to provide a test monitor who meets these requirements, it could seek an amendment from the FAA allowing it to use one or more test monitors who do not meet the qualifications requirements. Requiring that monitors be employees of the carriers would prevent carriers from designating contracted screening company employees as test monitors, resulting in increased carrier involvement with monitors who are independent from the screening companies. Carriers could designate any qualified carrier employees as test monitors, including ground security coordinators. In addition to the qualifications requirement, test monitors would be required to be familiar with the testing and grading procedures contained in their screening companies' security programs and would be required to monitor the procedures as specified in the security programs.

IV.J. Additional Proposed Requirements to Parts 108, 109, and 129

Proposed § 109.1, ''Applicability,'' would revise current § 109.1 to clarify and simplify the applicability for the part. The proposal would state that § 109.1 prescribes aviation security rules governing each indirect air carrier (IAC) engaged indirectly in the air transportation of property.

Proposed § 109.3, ''Definitions,'' would define the term ''indirect air carrier'' to clarify its meaning for the purpose of part 109.

Proposed § 109.7, ''Falsification,'' would be a new section in part 109. This section would be added to be consistent with the falsification requirements in proposed § 108.7.

Proposed § 109.101, ''Adoption and implementation,'' would be created to emphasize the requirement for each indirect air carrier to adopt and carry out a security program that meets the requirements of § 109.103. Creating this separate section would also make the statement of this requirement consistent with the ''Adoption and implementation'' section in § 108.101.

Proposed § 109.201, ''Screening of Cargo,'' would be added to clarify under paragraph (a) that each indirect air carrier that elects to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its approved security program and its screening company approved security program(s) to inspect cargo and prevent the carriage of explosives or incendiaries onboard any aircraft. Proposed § 109.201(b) would be added to clarify that each indirect air carrier that elects to conduct screening under a security program shall detect and prevent the carriage of explosives or incendiaries aboard aircraft and into sterile areas in cargo. This section would be added to be consistent with the applicable requirements in the ''Screening of persons and property and acceptance of cargo'' section in proposed § 108.201.

Proposed § 108.201(m) would be added under ''Screening of persons and property and acceptance of cargo'' to clarify that although all screening-related requirements for screening in the United States have been relocated to part 111, certain requirements still apply at screening locations outside the United States at which air carriers have operational control over screening. Specifically, proposed § 108.201(m) would state that air carriers that do have operational control over screening outside the United States shall carry out and comply with all relevant sections of part 111 of this chapter, except for those requirements related to screening company certification, to the extent allowable by local law. An air carrier would be permitted to use screeners who do not meet the requirements of § 111.205(a)(3) provided that at least one representative of the air carrier who has the ability to read and speak English functionally is present while the air carrier's passengers are undergoing security screening. In the event that an air carrier is unable to implement any of the requirements for screening, the air carrier would be required to notify the Administrator of those air carrier stations or screening locations so affected. Most of proposed § 108.201(m) consists of requirements contained in § 108.209(e) and (f) of proposed Notice No. 97–12. Proposed § 108.201(n) would be added to require that air carriers notify the Administrator of any screening locations outside the United States at which they do have operational control. To the FAA's knowledge, there are currently no foreign locations where part 108 air carriers have operational control over screening; however, this proposal includes these requirements in the event of such a situation.

Proposed § 108.203, ''Use of metal detection devices,'' would be revised to state that no air carrier may use a metal detection device contrary to its approved security program or its screening company approved program(s). The section would also be revised to require that metal detection devices meet the calibration standards established by the Administrator in the screening company approved security program(s).

Proposed § 108.227(b) would be amended to also require that each air carrier ensure that individuals performing security-related functions on its behalf have knowledge of their screening company approved security program(s) to the extent that such individuals need to know in order to perform their duties.

Proposed § 108.301(b)(1) would be amended to require that the ground security coordinator (GSC) at each airport also conduct a review of all security-related functions for effectiveness and compliance with its screening company security program(s). Proposed § 108.301(b)(2) would be amended to require that the GSC at each airport also immediately initiate corrective action with its applicable screening company for each instance of noncompliance with the screening company's security program.

Proposed § 129.25(j) would revise current (j) to more clearly break out and include the operations requirements consistent with § 108.201.

V. Proposed Revisions to Part 191

V.A. Protection of Sensitive Security Information (SSI)

The carriers' security programs are not available to the public because the information that they contain would be helpful to individuals who might intend to attack civil aviation. Part 191 of Title 14, Code of Federal Regulations, contains rules to protect security

programs and other sensitive security information (SSI) from disclosure to unauthorized persons. For example, under § 191.5, a carrier and each individual employed by, contracted to, or acting for that carrier are required to restrict disclosure of and access to SSI to persons with a need to know.

V.B. § 191.1 Applicability and Definitions

Part 191.1(c) indicates that for matters involving the release or withholding of information and records containing information described in § 191.7 (a) through (g) and related documents described in (l), the authority of the Administrator may be further delegated. The FAA proposes to add § 191.7(m) to this list.

V.C. § 191.5 Records and Information Protected by Others

Currently, screeners are required to protect SSI because they are employed by, contracted to, or acting for carriers. This would remain true under the screening company certification rules proposed in this notice. However, to emphasize the need for screening companies and their employees to protect SSI, the FAA proposes to add to § 191.5 the requirement that screening companies also shall restrict access to SSI.

As discussed previously, the FAA anticipates that in the course of applying for and qualifying for a screening company certificate, an applicant would receive the Screening Standard Security Program. To ensure that applicants for certificates are under the same requirements to protect SSI as are persons who hold certificates, the FAA proposes to add § 191.5(e). Proposed § 191.5(e) provides that references in part 191 to an air carrier, airport operator, indirect air carrier, foreign air carrier, or certificated screening company include applicants. Thus, an applicant for a screening company certificate would be required to restrict disclosure of the security program information that it receives. The same would be true of an applicant for an air carrier certificate who also is seeking an approved security program. The amount of SSI that carrier applicants now receive is very limited, and there usually is very little time between when they might receive standard security program information and when they might become certificated. However, they should protect the security program information from unauthorized disclosure.

In some parts of the industry, individuals may be placed in training for positions, such as a screener position, before they are on the companies' payrolls. The training may include SSI. If a person completes training, he or she is hired. There has been some misunderstanding as to whether such trainees are covered by part 191. The FAA does consider them to be covered and proposes to add § 191.5(f) to make this clear. Such trainees meet one or more of the criteria of employed by, contracted to, or acting for a carrier, airport operator, or screening company.

V.D. § 191.7 Description of SSI

Section 191.7 defines what information and records are SSI and therefore are subject to the protections in § 191.5. Under this proposal, § 191.7 would be amended to treat screening companies the same as carriers and to emphasize the need for them to protect sensitive security information. Section 191.7(a) describes various security programs that are protected. It would be amended to include screening company security programs.

Section 191.7(h) describes the information that the Administrator has determined may reveal systemic vulnerabilities of the aviation system or vulnerabilities of aviation facilities to attack. It would be amended to include alleged violations and findings of violations of part 111 and any information that could lead to the disclosure of security information or data developed during FAA evaluations of certificated screening companies. For events that occurred less than 12 months before the date of the release of the information, § 191.7(h) would be amended to allow the FAA to release summaries of certificated screening companies' total security violations in specified time ranges without identifying specific violations. For events that occurred 12 months or more before the date of the release of the information, § 191.7(h) would be amended to allow the FAA to release the names of certificated screening companies cited in the alleged violations.

A new § 191.7(m) would be added to cover the operations specifications of screening companies. Specific portions of the operations specifications would be considered SSI and would be protected from disclosure to unauthorized persons. Some parts of the operations specifications, however, would be considered not to be SSI and would not be protected under part 191. These nonprotected items include the name of the company, the locations at which the Administrator has authorized the company to conduct business, the type of screening that the Administrator has authorized the company to perform, and the title and name of the person required by proposed § 111.209(b).

A new § 191.7(n) would be added to cover the screener tests that the FAA will develop and require under proposed § 111.215. These tests will contain information that is in the security programs and must be protected in the same way.

VI. Paperwork Reduction Act

This proposal would create a new part 111 within Title 14, Code of Federal Regulations, titled ''Certification of Screening Companies.'' It would also result in conforming amendments to 14 CFR parts 108, 109, 129, and 191. This proposal contains information collections that the FAA has submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)).

Title: Certification of Screening Companies.

The following proposed sections include new information collection requirements: § § 108.103(b)(14) and (15), 108.201(j), and (k), 108.205, 108.207, 108.229, 109.103(b)(4) and (5), 109.105, 109.203(b) and (c), 109.205, 109.207(e), (f), and (h), 111.105–111.109, 111.113–111.119, 111.205, 111.209, 111.215, 111.219, 111.221, 129.25(c)(5) and (6), (l), (m), and (o), 129.26(a)(4), and 129.28.

The FAA proposes to require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. The FAA also proposes specific requirements that are intended to improve the screening of passengers, accessible property, checked baggage, and cargo and proposes to provide standards for consistent high performance and increased accountability of screening companies. The proposal is in response to a recommendation by the White House Commission on Aviation Safety and Security and to a Congressional mandate in Section 302 of the Federal Aviation Reauthorization Act of 1996.

The FAA would collect several types of information from screening companies. The FAA would collect and analyze information during the application process before issuing certificates to screening companies. This would be the most significant collection of information involved but would ccur only initially for provisional screening company certificates, after approximately 1 year for ''standard'' certificates, and once every 5 years thereafter. In addition, the FAA would

require that screening companies notify the FAA and provide information as applicable when adopting their security programs and when proposing to amend their security programs, operations specifications, or screening company certificates. During periodic assessments of screening company operations, the screening companies would be required to provide any information requested to the FAA. The FAA would use this information to ensure that the screening companies and carriers are complying with screening requirements.

Next, the FAA would collect information from air carriers, foreign air carriers, and indirect air carriers. These carriers would be required to show evidence of compliance with specified regulations and programs. This includes a proposed requirement that carriers maintain copies of their screening companies' security programs at their principal business offices and at their screening locations, and be able to obtain copies of these programs to show the FAA upon request. Carriers would be required to include in their security programs descriptions of the systems that they would use to evaluate and test the performance of all screening that they conduct. This requirement would ensure that all carriers plan how they would remain actively involved in evaluating and testing their screening operations and then carry out those security program provisions. The FAA would review each security program to ensure that the systems descriptions provide for effective oversight and would evaluate the carriers periodically to ensure that they are complying with their security programs. Each carrier would also be required to collect threat image projection data as specified in its carrier security program and in its responsible screening company security programs and make the data available to the FAA if requested.

In addition to the FAA collecting information, carriers would also collect information from screening companies. First, when the FAA issues an enforcement action to a screening company, that company would be required to provide a copy of the enforcement action to the carrier(s) for which it is providing screening. The carriers would use the information that they collect regarding enforcement actions to monitor the effectiveness of the screening operations being conducted on their behalf. This would be a third party disclosure. Second, carriers would also receive copies of their screening companies' certificates, operations specifications, and security programs as well as all of their screening companies' proposed changes to any of this documentation. A screening company would be required to submit with its amendment request a statement that all carriers for which it screens have been advised of the proposed amendment and have no objection to it. The Administrator would review this application and determine whether or not to approve the proposed amendment. Third, upon termination of screening services at a site, a screening company would be required to surrender all its records of individual screeners to the carrier(s) for which it conducts screening. The carrier(s) would use this information from the screening company as needed for future contracts.

Air carriers and foreign air carriers also would be required under this proposal to notify the public by posting signs at screening locations as specified in their security programs when they are required by the FAA to implement additional security measures to maintain system performance. This would be a third-party disclosure. Indirect air carriers, in particular, would be required under this proposal to post signs or provide written notifications to their customers to caution them that certain X-ray systems being used may damage specified types of film contained in their property. Indirect air carriers also would be required under this proposal to maintain copies of the results of their most recent radiation surveys conducted at their principal business offices and the places where the X-ray systems are in operation and would be required to make the surveys available for FAA inspection upon request.

Screening companies would also be required to collect and retain information under this proposed rule. Screening companies would be required to collect copies of applicable regulations as specified in the proposed rule and maintain records regarding the requirements in the rule. Such records would include copies of their certificates, operations specifications, security programs, and training records. Screening companies would be required to ensure that the steps in current § 108.33(c)(1–4) have been completed before providing sensitive security information to screener trainees. Screening companies would be required to annotate screeners' training records when screeners complete or terminate their training or transfer to other companies. Screening companies would on occasion collect brief permission statements from screeners that would require them to release screener training and performance records to other screening companies or to the screeners directly upon the screeners' request. These would be third-party disclosures. Screening companies would also be required under this proposal to issue letters of completion of training to all screeners, screeners-in-charge, and checkpoint security supervisors upon their successful completion of approved initial, recurrent, and specialized courses of training.

It is estimated that this proposal would affect 640 screening companies and carriers annually. This estimate consists of 66 screening companies, 150 air carriers, 145 foreign air carriers, and 264 indirect air carriers. This estimate also takes into account the FAA's assumption that approximately 15 of the air carriers would apply for and receive screening company certificates in order to screen cargo and thus counts these 15 air carriers twice—once, which takes into account the costs they would accrue as air carriers and once more, which takes into account the costs they would accrue as screening companies. The estimated annual reporting and recordkeeping burden hours are estimated to be 173,577 hours.

Individuals and organizations may submit comments regarding the information collection requirements. The comments must be received on or before April 4, 2000 and must be submitted to the address for comments listed in the **ADDRESSES** section of this document. These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the equality, utility, and clarity of the information to be collected can be enhanced; and how the burden of the collection can be minimized.

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. When OMB assigns a control number, a notification of that number will be published in the **Federal Register**.

VII. Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. This proposal is consistent with the ICAO security standards. The ICAO standards do not differentiate security requirements by aircraft seating capacity, and they require the screening of passengers for all international flights. The FAA is not aware of any

differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

VIII. Regulatory Analyses

VIII.A. Regulatory Evaluation Summary

This proposed rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but does not reach the threshold for an ''economically significant'' action (i.e., annual costs greater than $100 million).

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended March 1996, requires agencies to analyze the economic effects of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the proposed rule would generate benefits that justify its costs. Although the FAA was unable to determine if the proposed rule would have a significant impact on a substantial number of small entities and given the complexity of the issues, the FAA conducted a regulatory flexibility analysis. The proposed rule would not constitute a barrier to international trade and does not contain Federal intergovernmental or private sector mandates. The full analyses performed in response to the above requirements are contained in the docket and are summarized below.

The FAA has analyzed the expected costs of this regulatory proposal for a 10-year period, from 2000 through 2009. As required by the Office of Management and Budget (OMB), the present value of this cost stream was calculated using a discount factor of 7 percent. All costs in this analysis are expressed in 1997 dollars.

Companies that have traditionally been providing passenger screening for air carriers would be covered by these proposed regulations. Some direct air carriers do their own passenger screening and/or provide screening for other direct air carriers; in the context of passenger screening, these carriers will be referred to as screening companies. There currently are 66 screening companies performing screening for part 108 and part 129 air carriers. The FAA estimates that in 2000, there would be approximately 19,600 screeners and screener supervisors, working for these screening companies who would be affected by this proposed rule. The FAA estimates that there would be an additional 3 screening companies that would be covered by these regulations each year starting in 2001.

This proposed rule also would affect the 150 U.S. air carrier operators certificated under part 108 providing scheduled and other domestic and international passenger service in the United States as well as the 2,634 U.S. indirect air carriers certificated under part 109 and 145 foreign air carriers certificated under part 129. The FAA assumes that the number of direct, indirect, and foreign air carriers would remain constant for each year of the analysis.

The FAA assumes that 10 percent of the direct and indirect air carriers that currently transport cargo would elect to screen this cargo. The FAA assumes that these carriers would choose to do their own screening, with time being a very expensive commodity, for it would be cost beneficial for them to do so rather than depend on other screening companies to perform the services. Air carriers that screen cargo would need to comply with the provisions that regulate screening companies; this compliance would generate new costs.

Some of the sections of the proposed part 111 make references to parts 108 and 109, and this analysis also examines potential changes to parts 108 and 109. The numbering system for part 108 of this NPRM is based on the numbering system of a recently published NPRM; on August 1, 1997, the FAA published Notice No. 97–12, which proposes to revise 14 CFR part 108 to update the overall regulatory structure for air carrier security (62 FR 41730). This notice proposes to amend the proposed rule language of part 108 in Notice No. 97–12 rather than the current part 108. The numbering systems for revised part 109 (and proposed part 111) also are closely aligned with the Notice No. 97–12 numbering system for clarity and consistency. If the text refers to a proposed section in part 108 that is simply a renumbered section (based on Notice No. 97–12), the current section number will be placed in parentheses.

Many of the proposals for part 111 are either definitional or discuss requirements in other sections. In addition, many of the proposed changes to parts 108, 109, and 129 simply change definitions or make minor word changes. These changes would not result in any incremental costs and will not be covered in this summary. Twenty-one proposed sections would result in costs and these are covered below.

Proposed § 111.5 would require all companies performing screening to allow FAA inspection to determine compliance with these proposals. The screening company must also allow for FAA inspections and tests of equipment as well as procedures at screening locations that relate to the carrier's compliance with their regulations. The FAA estimates that it would need 12 additional inspectors, 3 based at FAA headquarters and 1 each stationed at the 9 FAA regions. The additional personnel would process all the paperwork involved with issuing the certificates, writing and approving the Standard Security Screening Program (SSSP), and approving operations specifications as well as processing any changes and amendments and analyzing performance data. Ten-year costs sum to $10.10 million (net present value, $7.10 million).

Proposed § 111.105 would provide specific requirements for each screening company's SSSP. The FAA would write the basic SSSP document and provide copies of the document to the screening companies. After the SSSP is finalized, each screening company would be required to maintain at least 1 complete copy of the SSSP at its principal business office, at each airport that it serves, and each carrier that it screens for. The 10-year costs for this proposed section sum to $65,600 (net present value, $50,400).

Proposed § 111.107 describes the procedures for seeking SSSP approvals and making future amendments. A screening company would review the basic SSSP document obtained from the FAA, and then could choose to adopt the SSSP as is or adopt the SSSP after making amendments to it. Either the company providing screening services or the FAA could initiate amendments to the SSSP after its initial makeup has been agreed upon. The FAA assumes, for the purpose of this analysis, that amendments to the SSSP would occur 3 times a year on average. Each company would then need to brief its employees on these changes. In addition, both screening companies and the FAA would be required to make sure that all carriers using those screening companies are aware of and concur with all SSSP changes. Total 10-year costs for § 111.107 sum to $48.13 million (net present value, $33.27 million).

Proposed § 111.109 would require all screening companies to have

certificates. All companies would apply initially for provisional certificates that would be good for 1 year. Existing companies would be permitted to continue their screening activities uninterrupted while their applications are considered. Both existing and new screening companies would then have to apply for standard certificates, which would be effective for 5 years. The FAA would inspect screening companies regularly and would monitor operations and tests continually to determine that each screening company is in compliance with the regulations. Once a certificate is obtained, a screening company would need to apply to the FAA for an amendment to change any of the information on the certificate; the FAA assumes that a certificate would be amended once every other year on average. Total 10-year costs sum to $133,000 (net present value, $96,400).

Proposed § 111.113 would stipulate what each screening company would need to have in its operations specifications (ops specs) in order to get a screening certificate. Each screening company would write its own ops specs; this document would emphasize the capabilities and needs of the screening company, and it would need to be submitted to the FAA for approval. Once the certificate is approved, the screening company would be required to maintain a complete copy of its ops specs at its principal business office and at each airport where it conducts security screening as well as provide a current copy to each carrier for which it screens. The FAA assumes that the ops specs would be amended 4 times a year, twice by the screening company and twice by the FAA. Total 10-year costs sum to $513,700 (net present value, $447,400).

Proposed § 111.115 describes the procedures for approving a company's ops specs and future amendments to these ops specs. After a company's ops specs are submitted, the FAA would review them to consider whether changes are needed. Further FAA approval of the ops specs would be necessary only if the screening company sought to amend them. The screening company would need to brief its employees after initial FAA acceptance of the ops specs and after each amendment. The FAA assumes, for the purpose of this analysis, that changes to the ops specs would occur twice a year on average. Total 10-year costs sum to $5.29 million (net present value, $3.70 million).

Proposed § 111.117 would require each screening company to allow each carrier for which it performs screening to inspect the screening company's personnel, facilities, equipment, and records to determine compliance. Direct air carriers currently inspect the locations of the screening companies that are screening for them; the FAA assumes that the new requirements would result in additional inspections. Should an audit result in an alleged violation, a screening company would provide a copy of any proposed and final enforcement action to each carrier for which it screens. This proposed requirement would assist the carriers in evaluating the performance of their screening companies. Ten-year costs sum to $10.36 million (net present value, $7.38 million).

Proposed § 111.119 would require each certificated security screening company to have a principal business office with mailing address and to notify the FAA of any address changes. The FAA assumes that virtually all businesses currently have a principal business office, and expects that a screening company would change its mailing address once every 3 years on average. Ten-year costs sum to $4,800 (net present value, $3,300).

Under proposed § 111.201, screening companies would be required to prevent the introduction of explosives, incendiaries, or deadly or dangerous weapon into sterile areas. In addition, screening companies would be required to staff their security screening checkpoints. Companies that currently screen would not incur additional costs. However, indirect air carriers that choose to screen would have new responsibilities and costs; these costs would include those for training new personnel and, in some cases, purchasing new equipment (the costs of which are included in proposed § 109.207). Total 10-year costs for § 111.201 sum to $1.01 million (net present value, $711,300).

Proposed § 111.205 would require initial and recurrent training for persons who screen passengers, checked baggage, and carry-on items. This training would include ensuring that screeners work in a courteous and efficient manner and in compliance with the applicable civil rights laws of the United States. This proposed section also would require persons with supervisory screening duties to have initial and recurrent training that includes leadership and management subjects. Ten-year costs would be $8.29 million (net present value, $5.78 million).

Proposed § 111.209 would require all companies providing screening services to have qualified management and technical personnel available at each major screening locations. Among these would be the screening performance coordinator (SPC), CSS's and Screeners in charge (SIC's). The SPC would be the focal point for FAA communication on security-related issues and communication. All SPC's would be required to take annual classes in leadership training, which would be a new requirement. While each screening company would be required to fill this position, the FAA does not assume that it would be a full time position at every screening company. At smaller companies, the persons who fill the SPC positions could perform SPC duties on a part time basis while performing other duties at other times. The FAA calls for comments from screening companies as to the number of companies that already have personnel performing these SPC duties, and requests that all comments be accompanied with clear documentation. Ten-year costs for § 111.209 would be $67.27 million (net present value, $47.06 million).

Proposed § 111.213 would specify the requirements for screening companies regarding training programs and knowledge of subject areas. The FAA proposes to create performance-based training where screening companies could use FAA-approved computer-based training (CBT) programs. Screening companies would be responsible for ensuring that their trainees are able to pass FAA knowledge-based and X-ray interpretation tests at the end of their initial training and that screening personnel meet performance standards thereafter. Ten-year costs sum to $7.78 million (net present value, $5.41 million).

Proposed § 111.215 would require that all screening personnel pass computerized tests at the conclusion of their initial training and every year thereafter and that the tests be administered by air carrier personnel. Each screening company would be required to use an FAA-designed computer-based test. The tests would be designed to help ensure that screener trainees have achieved the knowledge and skills that they need to perform their jobs effectively. In addition, the FAA would require that all screening personnel pass additional 1 hour tests after their on-the-job-training. These additional tests would be designed to test proficiency and may require higher scores than those the tests after initial training. These subsequent tests would not need to be administered by air carrier personnel. Ten-year costs for this proposed section sum to $3.44 million (net present value, $2.38 million).

To increase screener professionalism, proposed § 111.219 would require all

screening companies to issue letters of completion of training to screeners upon their successful completion of approved courses of training. These letters of completion would provide personnel with official records of their specific training accomplishments. The FAA anticipates that screeners with evidence of training could move more smoothly between employers and that they would be valued more highly because they would not require as much training as new hires. Most importantly, the FAA believes that requiring screening companies to issue letters of completion to screeners for successful completion of training would help enhance professionalism in this essential security job. Ten years' costs sum to $1.38 million (net present value, $963,600).

Under proposed § 111.221, companies that provide screening services would be required to forward screener training records to other screening providers when requested by the screeners. This requirement would help increase each screener's control over his or her own mobility, and would resolve current problems relating to control of screener documents. Ten-year costs above and beyond the SPC's time sum to $151,300 (net present value, $105,500).

Under proposed § 111.223, each screening company would be required to use a threat image projection (TIP) system for each X-ray and explosives detection system (EDS) that it uses to measure the screening company's performance. (TIP is capable of introducing test objects to screeners on the X-ray machines and EDS machines at any rates set on the computers. The success rates can easily be recorded and later analyzed by the FAA, the carriers, and the screening companies to monitor continuously how well screening locations are operating.) Proper operation of TIP systems and data collection would be critical to measuring accurately screening company performances. The FAA would ultimately establish a performance range that all screening companies would be required to fall within to be considered effective at detecting possible threats. The FAA would be responsible for collecting TIP-related data; 10-year costs would sum to $20.46 million (net present value, $14.37 million).

Proposed §§ 108.103 (current § 108.7), 109.103, and 129.25(c) set forth changes to the direct, indirect, and foreign air carrier security programs. New program sections would be required; these new sections would reference each carrier's new responsibilities and requirements vis-a-vis screening companies. Hence, new sections would have to be written and submitted to the FAA for approval, and air carriers would need to expend resources to maintain these new sections. The proposed changes to § 109.103 also would require indirect air carriers to acknowledge in writing their receipt of approved security programs or security program amendments from the FAA. Ten-year costs for these sections total $15.29 million (net present value, $10.74 million).

The proposal would modify the current regulatory text of proposed § § 109.105 (current § 109.5) and 129.25(e) to clarify the requirements and make them consistent with the organization of proposed § 108.105 (current § 108.25). Under these proposals, the only substantive change would affect indirect air carriers, as they would be allowed to petition the FAA to reconsider FAA amendments if the petitions are submitted no later than 15 days before the effective dates of the FAA amendment. Ten-year costs total $14,800 (net present value, $10,400).

Proposed §§ 108.201(i) and (j); 109.203(b) and (c); and 129.25(l) and (m) (all new sections) would require each carrier to ensure that each of its screening company's actions are consistent with part 111, the screening company's SSSP, and the screening company's ops specs. Each air carrier would need to expend resources to amend its security programs to include these new oversight responsibilities. Air carriers would also have to purchase and maintain computer equipment required to test screeners. The amounts and types of equipment that air carriers would need to provide to screening companies would vary depending on the size of the airports where the screening is taking place. The FAA currently is providing screening companies at certain airports with computers for CBT but would not provide for the computer's maintenance; all other equipment would have to be purchased and maintained by the applicable air carriers. Ten-year costs for these proposed sections sum to $21.07 million (net present value, $15.52 million).

Proposed §§ 108.205 (current § 108.17), 109.207, and 129.26 would be amended to require that carriers use X-ray systems in accordance with their security program and applicable screening company security programs. Each carrier would need to ensure that each X-ray system that uses TIP meets the standards set forth in its security program. As TIP is a new system, X-ray systems that have been used at airports have not been designed to run it. Accordingly, many X-ray machines at airports would need to be replaced with equipment that is TIP compatible. The FAA is providing carriers at certain airports with the equipment required but would not provide the maintenance of these X-ray machines; all other equipment would have to be purchased and maintained by the applicable carriers. The FAA proposes that the deployment of these machines be phased in over a 5-year period based on the size and complexity of the airport. In addition, foreign air carriers would no longer have to ensure that their screening operators be provided with individual personal dosimeters to measure exposure to X-rays; removal of this requirement would result in cost savings. Ten-year costs for this proposed section sum to $69.39 million (net present value, $57.20 million).

Proposed new §§ 108.229, 109.205, and 129.25(n) would require that each carrier monitor each screener training test required under proposed § 111.215 for all screening companies screening on the carrier's behalf. This proposed requirement is intended to increase air carrier involvement with the training and testing processes and to help deter cheating. Each test monitor would have to be a direct carrier employee (not a contracted employee) who does not have part 111 or other screening-related responsibilities. These proposed sections also would require that screeners be evaluated by non-screening supervisors once a year; direct and foreign air carriers already have supervisors do this, so the only additional cost would be for indirect air carriers. Ten-year costs for this proposed section sum to $9.04 million (net present value, $6.32 million).

Total 10-year costs for these proposals would be $300.02 million (present value, $219.22 million).

Benefits

The primary benefit of the proposed rule would be significantly increased protection to U.S. citizens and other citizens traveling on U.S. domestic and foreign air carrier flights from acts of terrorism as well as increased protection for those operating aircraft. Specifically, the proposed rule is aimed at deterring terrorism by preventing explosives, incendiaries, and deadly or dangerous weapons from being carried aboard commercial flights in checked baggage, carry-on baggage, cargo, and on persons.

Terrorism can occur within the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining

terrorist groups. The activities of some these individuals and groups go beyond fund raising to recruiting other persons (both foreign and U.S.) for activities that include training with weapons and making bombs. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993 attack on the World Trade Center (WTC) uncovered a foreign terrorist threat in the United States that is more serious than previously known. The WTC investigation disclosed that Ramzi Yousef had arrived in the United States in September 1992 and had presented himself to immigration officials as an Iraqi dissident seeking asylum. Yousef and a group of Islamic radicals in the United States then spent the next 5 months planning the bombing of the WTC and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the WTC bombing took place. Yousef traveled to the Philippines in early 1994 and by August of the same year had conceived a plan to bomb as many as 12 U.S. airliners flying between East Asian cities and the United States.

Yousef and co-conspirators Abdul Murad and Wali Khan tested the type of explosive devices to be used in the aircraft bombings and demonstrated the group's ability to assemble such a device in a public place, in the December 1994 bombing of a Manila theater. Later the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine city of Cebu.

Preparations for executing the plan were progressing rapidly. However, the airliner bombing plot was discovered in January 1995 by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigations of computer files taken from the apartment revealed the plan, in which 5 terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. In each case, a similar technique was to be used. A terrorist would fly the first leg of a flight out of a city in East Asia, planting the device aboard the aircraft and then deplane at an intermediate stop. The explosive device would then destroy the aircraft, continuing on a subsequent leg of the flight to the United States. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef, Murad, and Khan were arrested and convicted in the bombing of Philippine Airlines flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot, while the 2 other co-conspirators have been convicted. Yousef also was convicted and sentenced to 240 years for the World Trade Center bombing. However, there are continuing concerns about the possibility that other conspirators remain at large. The airline bombing plot, as described in the files of Yousef's laptop computer, would have had 5 participants. This suggests that, while Yousef, Murad and Khan are in custody, there may be others at large with the knowledge and skills necessary to carry out similar plots against civil aviation.

The fact that Ramzi Yousef was responsible for both the WTC bombing and the plot to bomb as many as 12 United States air carrier aircraft shows that: (1) Foreign terrorists are able to operate in the U.S. and (2) Foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. This, in turn, suggests that foreign terrorists conducting future attacks in the U.S. may choose civil aviation as a target. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy.

The bombing of a Federal office building in Oklahoma City, Oklahoma shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increasing threat to civil aviation from both foreign sources and potential domestic ones exists and needs to be prevented and/or countered.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are representatives of the United States, and therefore are targets;
- Up to 12 airplanes could have been destroyed and thousands of passengers killed in the actual plot described above;
- These plots came close to being carried out; it was only through a fortunate discovery and then extra tight security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore,
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines Class I Explosions as incidents that involve the loss of an entire aircraft and incur a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety and Security (Commission) recommended further specific actions to increase civil aviation security. The Commission stated that it believes that the threat against civil aviation is changing and growing, and recommended that the Federal Government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation is a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) Authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) Requiring the FAA to promulgate additional security-related regulations, including this proposal.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed

by the planned and measured steps contained in this proposal.

Based on the above statement, and after evaluating feasible alternative measures, the FAA concludes that this proposed rule sets forth the best method to provide increased security at the present time. Notwithstanding the above, it is helpful to consider, to the limited extent possible, the benefits of this proposal in reducing the costs associated with terrorist acts. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in the proposed rule benefits at least equal to the proposed rule costs. This is intended to allow the reader to judge the likelihood of benefits of the proposed rule equaling or exceeding its cost.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. Terrorists acts can result in the complete destruction of an aircraft with the loss of all on board. The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. The fair market value of a Boeing 737 is $16.3 million, and the typical 737 airplane has 113 seats. It flies with an average load factor of 64.7%, which translates into 73 passengers per flight; the airplane would also have two pilots and three flight attendants.

A terrorist catastrophic event could also result in fatalities on the ground. However, looking at the number of accidents including aircraft covered by this proposed rule and the number of fatalities on the ground over the last ten years, the average fatality was less than 0.5 persons per accident. Therefore, the FAA will not assume any ground fatalities in this analysis.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars, a minimum of $2.7 million is used as the value of avoiding an aviation fatality (based on the willingness to pay approach for avoiding a fatality). In these computations, the present value of each incident was calculated using the current discount rate of 7 percent. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost $210.6 million (78 × $2.7 million). The safety related costs of a single domestic terrorist act on civil aviation sum to $271.18 million (net present value, $190.46 million).

Certainly the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA by Pailen-Johnson Associates, Inc., *An Econometric Model of the Impact of Terrorism on U.S. Air Carrier North Atlantic Operations*, indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988. In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989 for enplanements to approximate their 1987 and 1988 levels.

Trans-Atlantic enplanements increased, from 1985 to 1988, at an annual rate of 10.7 percent. Projecting this rate to 1989 would have yielded 1989 enplanements of 8.1 million, or 1.6 million more than Pan Am actually experienced. This represents almost a 20 percent reduction in expected enplanements caused by the destruction of Pan Am 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the sum of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by the proposed rule is a benefit.

The FAA is not able to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the proposed rule. The discounted cost of this proposed rule is $219.22 million, while the discounted benefits for each Class I Explosion averted comes to $190.46 million. Hence, if 1 Class I Explosion is averted, the present value of losses due to market disruption must at least equal $28.77 million ($219.22 million less $190.46 million—one Class I Explosion).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of 179,800 lost trips would be suffered, in combination with the safety benefits of 1 averted Class I Explosion, for the benefits of proposed rule to equal costs. This represents less than 0.1 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the minimum number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, a minimum retention of 221,300 and 143,800 lost trips, respectively, would need to occur for the proposed rule benefits to equal the proposed rule costs, assuming 1 Class I Explosion would be prevented. The FAA requests comments on the potential size of market loss per trip and number of lost trips averted.

The FAA used the same set of benefits for another proposed rule, ''Security of Checked Baggage on Flights Within the United States; Notice of Proposed Rulemaking'' (64 FR 19220, April 19, 1999) as both rulemakings have the same goals—to increase significantly the protection to U.S. citizens and other citizens traveling on U.S. domestic air carrier flights from acts of terrorism and to increase protection to those persons operating aircraft. Accordingly, the FAA calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify both proposed rules.

These values can be seen in the full analysis contained in the docket.

The FAA stresses that the range of trips discussed in the above paragraph should be looked upon as examples and does not represent an explicit endorsement that these would be the exact number of trips that would actually be lost. As noted above, it is important to compare, to the limited extent possible, the cost of this proposal to some estimate of the benefit of increased security it would provide as that level of security relates to the threat level.

Based on the White House Commission recommendation, recent Congressional mandates and the known reaction of U.S. citizens to any air carrier disaster, the FAA determines that proactive regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

VIII.B. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit Government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended in March 1996, requires regulatory agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' The Small Business Administration defines small entities to be those with 1,500 or fewer employees for the air transportation industry. For this proposed rule, the small entity groups are considered to be both scheduled air carrier operators (subject to FAR part 108) and screening companies having 1,500 or fewer employees. The FAA has identified a total of 41 direct air carriers and 38 screening companies that meet this definition.

The FAA has estimated the annualized cost impact on each of the small entities, but has not conclusively determined whether or not the proposed rule would have a significant economic impact on a substantial number of small air carrier and screening company entities. Accordingly, the Agency prepared an initial regulatory flexibility analysis and invites comments on the Agency's conclusion and on the analysis. This decision is based on the following analyses:

• One percent of the 1997 annual median revenue of the 41 small direct air carriers impacted by this proposed rule, which is $809,610 in 1997 dollars, is considered economically significant. None of these entities would incur a substantial economic impact in the form of annualized costs in excess of $809,610 as the result of the proposed rule. However, as will be discussed further below, several of the small direct air carriers are having financial difficulties and may have trouble meeting the requirements of this proposed rule. Furthermore, the cost burden is not strictly proportionate to the size of the airline as measured by the number of employees. In addition, as discussed below, the FAA was unable to obtain complete financial data on approximately one third the air carriers and believes it important to show the potential impact on these entities for the sake of completeness and in the hope of eliciting substantive comments.

• One percent of the 1997 annual median revenue of the 38 small screening companies impacted by this proposed rule, which is $296,830 in 1997 dollars, is considered economically significant. None of these entities would incur a substantial economic impact in the form of annualized costs in excess of $296,830 as the result of the proposed rule. However, based on the data available, some of the screening companies may have trouble meeting the requirements of the proposed rule due to financial difficulties. In addition, as discussed below, the FAA was unable to obtain any data on half of the screening companies and complete data on most of the rest, and so believes it important to show the potential impact on these entities for the sake of completeness and in the hope of eliciting substantive comments.

The FAA has not performed this type of analysis for the indirect carriers that would choose to screen cargo. Each of these carriers would have chosen to be certificated under part 111 and thus would be voluntarily subjected to these proposals. Since the carriers would have chosen to incur the costs, the FAA believes that none of these carriers would have done so if it were not in their financial interests. The FAA does not know which carriers would be certificated under proposed part 111 and so does not know how many of these carriers would be small entities. The FAA seeks comments concerning whether any small indirect carriers would screen cargo and requests that all comments be accompanied with clear documentation.

Initial Regulatory Flexibility Analysis

Under section 603(b) of the RFA (as amended), each initial regulatory flexibility analysis is required to address the following points: (1) Reasons why the FAA is considering the proposed rule, (2) The objectives and legal basis for the proposed rule, (3) The kind and number of small entities to which the proposed rule would apply, (4) The projected reporting, recordkeeping, and other compliance requirements of the proposed rule, and (5) All Federal rules that may duplicate, overlap, or conflict with the proposed rule. The FAA will perform this analysis for small direct air carrier and small screening companies separately.

1. Air Carriers

Reasons why the FAA is considering the proposed rule.—Over the past several years, both Congress and the FAA have recognized that the threat against civil aviation is changing and growing (see the background section of the preamble for a more detailed discussion of this threat). Terrorist and criminal activities within the United States have forced the Congress, the FAA and other Federal agencies to reevaluate the domestic threat against civil aviation. The proposed rule is intended to counter this increased threat to U.S. civil aviation security.

The objectives and legal basis for the proposed rule.—The objective of the proposed rule is to increase protection to Americans and others traveling on U.S. domestic air carrier flights from terrorist acts. Specifically, the proposed rule is aimed at preventing explosives from being on board commercial flights either in carry-on baggage or checked cargo.

The legal basis for the proposed rule is found in 49 U.S.C. 44901 *et seq.* Among other matters the FAA must consider as a matter of policy are maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

The kind and number of small entities to which the proposed rule would apply.—The proposed rule applies to 150 scheduled airlines subject to FAR part 108, of which 41 are small scheduled operators (with 1,500 or fewer employees).

The projected reporting, recordkeeping, and other compliance requirements of the proposed rule.—As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review. Four proposed sections would impose paperwork costs on small direct air carriers; these are described in detail in the full analysis contained in the docket. The average amount of paperwork time and costs for each small direct air carrier sums to 270.9 hours, costing $6,395 per year. Over 10 years,

total time and costs for all small direct air carriers sum to 111,048.5 hours costing $2,621,950.

All federal rules that may duplicate, overlap, or conflict with the proposed rule.—The FAA is unaware of any Federal rules that either duplicate, overlap, or conflict with the proposed rule.

Other Considerations:

Affordability Analysis

For the purpose of this analysis, the degree to which small entities can ''afford'' the cost of compliance is predicated on the availability of financial resources. Initial implementation costs can be paid from existing company assets such as cash, by borrowing, or through the provision of additional equity capital. Continuing annual costs of compliance may be accommodated either by accepting reduced profits, by raising ticket prices, or by finding other ways of offsetting costs.

In this analysis, one means of assessing the affordability is the ability of each of the small entities to meet its short-term obligations. According to financial literature, a company's short-run financial strength is substantially influenced by its working capital position and its ability to pay short-term liabilities, among other things.

Net working capital is the excess of current assets over current liabilities. It represents the margin of short-term debt-paying ability over existing short-term debt. In addition to the amount of net working capital, two analytical indexes of current position are often computed: (1) Current ratio; and (2) Quick ratio. The current ratio (*i.e.*, current assets divided by current liabilities) helps put the amount of net working capital into perspective by showing the relationship between current assets and short-run debt. And the quick ratio (sometimes called the acid test ratio) focuses on immediate liquidity (*e.g.*, cash, marketable securities, accounts receivable, divided by current liabilities). A decline in net working capital, the current ratio, and the quick ratio over a period of time (say, 3 years, 4 years, etc.) may indicate that a company is losing financial solvency. Negative net working capital is an indication of financial difficulty. If a company is experiencing financial difficulty, it is less likely to be able to afford additional costs.

There is an alternative perspective to the assessment of affordability based on working capital of this proposed rule. The alternative perspective pertains to the size of the annualized costs of the proposed rule relative to annual revenues. The lower the relative importance of the costs, the greater the likelihood that implementing offsetting cost-saving efficiencies or raising fares to cover increased costs will not substantially decrease the number of passengers.

The FAA collected financial information on small air carriers for 1994 to 1997. Unfortunately, some of the needed information was not available; in those cases, the FAA estimated revenue, assets, and liabilities based on taking averages of similar sized companies. For example, many of the financial statistics for 13 of the small regional operators were not available. Hence, because of the paucity of data for small regionals, many of the conclusions for many of the small regional carriers may be questionable.

The financial information suggests the following:

Liquidity Analysis/Profitability Analysis—Small Air Carriers

- Six of these entities have experienced increases in their net working capital as well as their current and quick ratios over the past 3 or 4 years. They also are generally profitable and, therefore, probably would have financial resources available to meet the requirements of this proposed rule.
- One small entity was unprofitable in 1997; however, it was profitable in the 3 previous years. In addition, it has positive net working capital, and its current and quick ratios have been strong. It is likely that this carrier would not have trouble meeting the costs of this proposed rule.
- For 10 currently profitable small entities, their ability to afford the cost of compliance is less certain. This uncertainty stems from the fact that the financial performances of these entities have been inconsistent over the past 4 years.
- The current liquidity and profitability of 11 small entities would require action to finance the expected cost of compliance imposed by this NPRM. Over the past 2 or 3 years, each of these small entities has had negative net working capital. In addition, their respective current and quick ratios have generally been on a decline. They have frequently experienced financial losses.
- For the 13 air carriers classified as small regionals for which the FAA does not have complete data, it appears likely that 7 of these air carriers would probably be able to afford the cost of compliance associated with this proposed rule, but the other 6 may have problems. This conclusion is based on their projected 1997 profitability.

Relative Cost Impact

- The other alternative of assessing affordability, annualized cost of compliance relative to the total operating revenues, shows that for each of the 41 small air carriers impacted by this NPRM, there would be relatively small impacts for most of the small entities. The annualized cost of compliance relative to total operating revenues would be less than or equal to 0.61 percent in all cases.
- Hence, for all of the air carriers, the ratio of annualized proposed rule costs to revenues would be less than 1.0 percent for each of the 3 years from 1995 through 1997. For all air carriers that have liquidity and/or profitability problems, there appears to be the prospect of absorbing the cost of the proposed rule through some combination of fare increases and cost efficiencies.

No clear conclusion can be drawn with regard to the abilities of some small entities to afford the cost of compliance that would be imposed by this NPRM. On one hand, the *Liquidity Analysis/Profitability Analysis* does not paint a positive picture of the ability of some of the small entities impacted by this NPRM to pay near-term expenses imposed by this rule, whereas the *Relative Cost Impact Analysis* indicates that most of those same small entities may be able, over time, to find ways to offset the increased cost of compliance. As the result of information ascertained from both of these analyses, there is uncertainty as to whether all of the small entities would be able to afford the additional cost of doing business due to compliance with this NPRM. Because of this uncertainty, the FAA solicits comments from the aviation community (especially from small air carriers with less than 1,500 employees) as to what extent small operators subject to this NPRM would be able to afford the cost of compliance. The FAA requests that all comments be accompanied with clear supporting data.

Disproportionality Analysis

On average, the 41 small entities would be disadvantaged relative to large air carriers due to disproportionate cost impacts. This would occur due to several reasons:

- Individual large air carrier's total operational revenues and current assets are, on average, well over 100 times larger than the revenues and assets for small air carriers. However, the large air carriers don't deal with 100 times as many checkpoints, X-ray systems, or screening companies. So, these air

carriers enjoy economies of scale in terms of the costs of complying with this proposed rule;

• All of the X-ray systems that the FAA anticipates purchasing would be purchased at the higher volume airports, so that almost all of them would be purchased for large air carriers; indeed, only 1 of these systems would be purchased for a small air carrier. This would save large air carriers almost $22 million; and

• All air carriers, whether large or small, would have some of the same fixed administrative costs, such as writing up and maintaining new sections to their security programs. Having such costs the same would give an advantage to large air carriers when looking at the proportionate effect of this proposed rule.

Competitiveness Analysis

This proposed rule would not impose significant costs on any small carriers. However, due to the financial problems that certain air carriers are having, there may be some impacts on the relative competitive positions of these carriers in markets served by them. A more detailed evaluation is described in the full analysis contained in the docket.

The FAA solicits comments on this issue from the U.S. airline industry and small airlines in particular. Specifically, commenters are asked to provide information on the impact that this proposed rule would have on the continued ability of small airlines to compete in their current markets. Comments are especially sought from operators with 1,500 or fewer employees who would be impacted by this proposed rule. The FAA requests that supporting data on markets and cost be provided with the comments.

Business Closure Analysis

The FAA is unable to determine with certainty the extent to which those small entities that would be significantly impacted by this proposed rule would have to close their operations. However, the profitability information and the affordability analysis can be indicators in business closures.

In determining whether or not any of the 41 small entities would close as the result of compliance with this proposed rule, one question must be answered: ''Would the cost of compliance be so great as to impair an entity's ability to remain in business?'' A number of these small entities are already in serious financial difficulty. To what extent the proposed rule makes the difference in whether these entities remain in business is difficult to answer. The FAA believes that the likelihood of business closure for any of these small air carriers as a result of this proposed rule is low to moderate. However, since there is uncertainty associated with whether some of the small entities would go out of business as the result of the compliance cost of this proposed rule, the FAA solicits comments from the aviation community as to the likelihood of this occurrence. As noted above, the FAA requests that all comments be accompanied with clear supporting data.

Alternatives

The FAA considered alternatives to the proposed rule for small direct air carriers. These alternatives have compliance costs that range from $13.30 million to $19.95 million.

Alternative 1—Status Quo. Under this alternative, the FAA would exempt small direct air carriers from all requirements of this proposed rule. Continuing with this policy would be the least costly course of action but also would be less safe than the proposed rule; direct air carriers are ultimately responsible for proper screening, as they must be able to ensure that the screening companies are in compliance and that screening personnel are performing adequately. The FAA believes that the threat to civil aviation within the United States has increased and that further rulemaking is necessary. Thus, this alternative is not considered to be acceptable because it permits continuation of an unacceptable level of risk to U.S. airline passengers. In addition, the FAA would not meet the Congressional mandate.

Alternative 2.—The FAA considered doing away with the test monitoring requirements of screening companies by small direct air carriers.

The proposal would require that each carrier monitor each screener training test for all screening companies that conduct screening on the air carrier's behalf. Each test monitor would have to be a direct air carrier employee. This alternative would result in cost savings to each small direct air carrier. Small carriers would no longer have to process request letters from the screening companies or have employees monitor the tests. Over 10 years, this alternative would save all small direct air carriers $2.68 million (net present value, $1.73 million), resulting in total compliance costs of $17.27 million (net present value, $12.54 million).

The FAA believes that this alternative would not enhance security. Because air carriers are ultimately responsible for ensuring the safe and proper screening of persons and property, the FAA believes that it is important to ensure air carrier involvement with critical aspects of this rulemaking. Monitoring testing is a critical aspect of this rulemaking, for it helps to prevent potential screeners from passing the tests by cheating and other unauthorized conduct. Removing the monitoring requirement would diminish the emphasis and importance that this proposed rule places on air carrier oversight. In addition, retaining the monitoring requirement helps to support the concept of a balance of responsibilities between screening companies and the air carriers for which they screen. Under this alternative, there would be less coordination between small air carriers and screening companies. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 3.—The FAA considered not requiring that smaller screening companies obtain approval from their carriers before submitting their security program amendments to the FAA.

The proposal would require screening companies to include in any proposed amendment packages that they send to the FAA statements that all carriers for which they screen have been advised of the proposed amendments and approve of them. Hence, each air carrier would have to process and respond to any proposed amendment by the screening companies that conduct screening on its behalf. This alternative would result in cost savings to each small direct air carrier. These carriers would not need to spend time evaluating the proposed amendments for the screening companies. Hence, the direct air carriers would no longer have to expend resources evaluating the proposed amendments by the screening companies. Over 10 years, this alternative would save all small direct air carriers $6.65 million (net present value, $4.67 million), resulting in total compliance costs of $13.30 million (net present value, $9.60 million).

The FAA believes that this alternative would harm security. Air carriers are responsible, by statute, for screening and would be held responsible along with the screening companies for complying with part 111 and the SSSP. The carriers would therefore need to be kept informed about any changes to screening-related regulations and should have the opportunity to comment on and approve of them before the FAA approves the changes. The FAA would have a difficult time holding carriers accountable for changes of which they were not made aware; this alternative would ensure that some air carriers were not made aware of all changes. Hence, under this alternative,

all carriers would not be informed of all screening-related changes to the applicable SSSP. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 4—The FAA considered not requiring that small air carriers install and operate TIP on their X-ray systems.

Under the proposal, each air carrier would need to ensure that each X-ray system that it uses has a TIP system that meets the standards set forth in its security program. As TIP is a new system, some older X-ray systems have not been designed to run TIP. Accordingly, many X-ray systems at airports would need to be replaced with newer systems that are TIP compatible. This alternative would result in cost savings to all small air carriers. These carriers would not have to purchase these new X-ray systems or maintain the TIP portions of the systems annually. Over 10 years, this alternative would save all small air carriers $6.09 million (net present value, $4.58 million), resulting in total compliance costs of $13.30 million (net present value, $9.60 million).

The FAA believes that this alternative would harm security. Promoting this alternative would result in inconsistent measurements of performance at different airports and even at different screening locations within airports; the FAA believes that it is important to have consistent measurements of performance at all screening locations. In addition, the FAA needs to ensure the same level of safety and continuity at all of the Nations airports and screening locations. Not having TIP would result in a reduction in security for those small air carriers covered under this alternative in particular and for the entire aviation system in general. Hence, under this alternative, there would be a decrease in screener effectiveness and a reduction in the number of ways to measure this decrease. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 5.—Proposed Rule. This alternative represents the proposed rule for direct air carriers. Under this alternative, small direct air carriers would be subject to all aspects of this proposed rulemaking. The cost of compliance expected to be incurred by the 41 small entities subject to the requirements of the proposed rule is estimated to be $19.95 million ($14.27 million, discounted) over the next 10 years. This alternative is preferred because the FAA believes that it has the best balance between costs and benefits for all screening companies while enhancing aviation safety and security (in the form of risk reduction) for the traveling public.

2. Screening Companies

Reasons why the FAA is considering the proposed rule.—The reasons are the same as those discussed above for the small air carriers.

The objectives and legal basis for the proposed rule.—The objectives and legal basis are the same as those discussed previously for the small air carriers.

The kind and number of small entities to which the proposed rule would apply.—The proposed rule applies to 66 screening companies that screen for direct air carriers subject to FAR parts 108 and 129, of which 38 are small entities (with 1,500 or fewer employees).

The projected reporting, recordkeeping, and other compliance requirements of the proposed rule.—As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copies of these proposed sections to the Office of Management and Budget (OMB) for its review. Twelve proposed sections would impose paperwork costs on small screening companies; these are described in detail in the full analysis contained in the docket. The average amount of paperwork for each small screening company totals 1,861.0 hours costing $78,259 over 10 years. Over 10 years, total time and costs for all small screening companies sum to 70,718 hours costing $2,973,836.

All Federal rules that may duplicate, overlap, or conflict with the proposed rule.—The FAA is unaware of any Federal rules that either duplicate, overlap, or conflict with the proposed rule.

Other Considerations

Affordability Analysis

The previous discussion under ''Affordability Analysis'' for small air carriers is applicable to small screening companies.

The FAA attempted to collect financial information on small screening companies. In many cases, the data were not available; data were available for only 19 companies for 1994 to 1997. Of the 38 small screening companies, 8 were small air carriers that screen for themselves and other air carriers; the financial information available is the same as was used in the previous small air carrier analysis. Unfortunately, though, there is no requirement for screening companies to report their financial data as there is for air carriers, so there is no readily available source for financial information. In addition, many of these companies are privately held companies that do not have to report their assets, liabilities, profits, and revenues. The FAA was able to find some information for 11 screening companies, but the scope of the data varied extensively; some of these companies have not updated their publicly disclosed financial data in several years. For 2 of the companies, the most recent data publicly available were from 1993, another had current assets and liabilities available only for 1994, while a fourth had net profits, current assets, and current liabilities available for only 1994 and 1995. In many cases, total operating revenue and quick assets were available, at most, for 1 year.

Another problem facing this type of financial analysis for a company that provides many services to include screening is that no matter how small a percentage of its business comes from screening, the company is being considered under this Initial Regulatory Flexibility Analysis if it has less than 1,500 employees. Neither finding data for such companies nor applying this data to other screening companies is straightforward. In addition, of the 18 screening companies for which the FAA had (or estimated) 1997 financial data, 8 of the 9 largest companies were small air carriers (and some of the data for these were based on estimates). Hence, it is difficult to extrapolate their financial information to makes estimations for other small screening companies.

The FAA attempted to make estimates based on the available data. The FAA requests financial data for all screening companies, particularly those where no information was publicly available; in all cases, the FAA requests that all data be accompanied by clear documentation.

The financial information suggests the following:

Liquidity Analysis/Profitability Analysis

- Of the 6 screening companies that are also air carriers for which the FAA has complete data on, 2 would probably have no problem meeting the proposed rule's requirements; two might have trouble meeting the proposed rule's requirements due to their inconsistent financial performance in previous years; and two probably would have trouble meeting the proposed rule's requirements due to poor financial performance.
- The other 2 screening companies that also are air carriers are small regional air carriers for which, as noted

previously, the FAA did not have complete data; it appears that both would probably be able to afford the cost of compliance associated with this proposed rule. This conclusion is based on their projected 1997 profitability.

As discussed above, the FAA has incomplete data on the remaining 11 screening companies and had to estimate portions of their financial data. Accordingly, these conclusions are less certain:

• Five of these entities have experienced increases in their net working capital as well as their current and quick ratios over the past 3 or 4 years. They also are generally profitable and therefore probably would have financial resources available to meet the requirements of this proposed rule.

• One small entity was unprofitable in 1994 but has been profitable in the last 3 years. Another small entity has been profitable in the past 2 years. Both now have positive net working capital, and their current and quick ratios have been strong. It is likely that these companies would not have trouble meeting the costs of this proposed rule.

• For two small entities, their ability to afford the cost of compliance is less certain. For one of these, while it was profitable for all 4 years, its net working capital as well as its current and quick ratios have been declining; in addition, it had negative net working capital in 1996 and 1997. For the other, while it has had positive net working capital for the last 3 years, it has not been profitable in 2 of these 3 years.

• The current liquidity and profitability of 2 small entities would require action to finance the expected cost of compliance imposed by this NPRM. Over the past 2 or 3 years, each of these small entities has had negative net working capital. In addition, their respective current and quick ratios have generally been on a decline. They have frequently experienced financial losses.

Relative Cost Impact

• In looking at the annualized cost of compliance relative to the total operating revenues for each of the 8 small air carriers that also provide screening services, the FAA notes that the costs show relatively small impacts for these small entities. The annualized cost of compliance relative to total operating revenues would be less than or equal to 0.12 percent.

• In looking at the annualized cost of compliance relative to the total operating revenues for the other 11 small entities, these ratios are not as benign. The annualized cost of compliance relative to total operating revenues would be less than or equal to 3.19 percent. For two companies, this ratio exceeds 1.0 percent for all three years examined; each of these 3 companies was profitable for the years examined. It is important to emphasize, once again, that many of these ratios are based on estimated total operating revenues.

• Hence, for each of the small screening companies, the ratio of annualized proposed rule costs to revenues would be no more than 3.19 percent for each of the 3 years from 1995 through 1997. For the 4 screening companies that had liquidity and/or profitability problems in 1997, this ratio has been no greater than 0.38 percent over this 3-year period, so there appears to be the prospect of absorbing the cost of the proposed rule through price and production efficiencies.

No clear conclusion can be drawn with regard to the abilities of some small entities to afford the costs of compliance that would be imposed by this NPRM. On one hand, the *Liquidity Analysis/Profitability Analysis* does not portray a positive picture of the ability of some of the small entities impacted by this NPRM to pay near-term expenses imposed by this rule, whereas the *Relative Cost Impact Analysis* indicates that most of those same small entities may be able, over time, to find ways to offset the incremental costs of compliance. As the result of information ascertained from both of these analyses, there is uncertainty as to whether all of the small entities would be able to afford the additional costs of doing business due to compliance with this NPRM. Because of this uncertainty, the FAA solicits comments from screening companies (especially from small companies with less than 1,500 employees) as to what extent small companies subject to this NPRM would be able to afford the costs of compliance. The FAA requests that all comments be accompanied with clear supporting data.

Disproportionality Analysis

Due in large part to the paucity of data from which to work, the FAA can not draw any firm conclusions concerning any of the 38 small entities would be disadvantaged relative to large screening companies due solely to disproportionate cost impacts. The FAA compared the annualized costs of the 5 largest screening companies to an average of annualized costs of the small entities, and found them to be, on average, 12 times as large. This comparison was basically in line with the comparison of the total operating revenues of the largest screening companies to the average of the small entities; these average, 11 times as large for both 1996 and 1997. However, this comparison was double the comparison of current assets of the largest screening companies to the average of the small entities for these same 2 years; the FAA found them to be, on average, 6 times as large. This analysis suggests that large entities may be disadvantaged relative to small screening companies due to disproportionate cost impact. The FAA requests that both large and small screening companies provide additional financial data to assist the FAA in determining any financial disproportionality. As always, the FAA requests that all submitted data be accompanied with clear documentation.

Competitiveness Analysis

This proposed rule would not impose significant costs on any small screening companies. However, due to the financial problems that certain air carriers are having, there may be some impact on the relative competitive positions of these carriers in markets served by them. The FAA solicits comments on this issue from all screening companies and small screening companies in particular. The FAA requests that supporting data on markets and cost be provided with the comments.

Business Closure Analysis

The FAA is unable to determine with certainty the extent to which those small entities that would be significantly impacted by this proposed rule would have to close their operations. However, the profitability information and the affordability analysis can be indicators in business closures.

In determining whether any of the 38 small entities would close business as the result of compliance with this proposed rule, one question must be answered: ''Would the cost of compliance be so great as to impair an entity's ability to remain in business?'' Of the information that the FAA has on 19 of these entities, 4 already are in serious financial difficulty. To what extent the proposed rule makes the difference in whether these entities remain in business is difficult to answer. The FAA believes that the likelihood of business closure for any of these small screening companies, as a result of this proposed rule, is low to moderate. However, since there is uncertainty associated with whether some of the small entities would go out of business as the result of the compliance costs of this proposed rule, the FAA solicits comments from the aviation community as to the likelihood

of this occurrence. As always, the FAA requests that all comments be accompanied with clear supporting data.

Alternatives

The FAA considered alternatives to the proposed rule for small screening companies. These alternatives have compliance costs that range from $12.73 million to $13.10 million.

Alternative 1.—Status Quo. Under this alternative, the FAA would exempt small screening companies from all requirements of this proposed rule. Currently, the FAA does not regulate screening companies directly. Continuing with this policy would be the least costly course of action but also would be less safe than the proposed rule and would not fulfill the Congressional mandate. The FAA believes that the threat to civil aviation within the United States has increased and that further rulemaking is necessary. Thus, this alternative is not considered to be acceptable because it permits continuation of an unacceptable level of risk to U.S. airline passengers.

Alternative 2.—The FAA considered doing away with direct air carrier test monitoring requirements for smaller screening companies.

The proposal would require each screening company to ensure that each test is monitored by an employee of the carrier for which it screens. The screening company would be responsible for informing the applicable carrier(s) that it plans to administer a test to screener trainees, and the applicable carrier(s) would be responsible for providing test monitors upon request. Under this alternative, small screening companies would not have to request a testing monitor. This alternative would result in cost savings to all small screening companies. These companies would no longer need to write letters to the applicable direct air carrier requesting the employees to monitor the tests. Over 10 years, this alternative would save all small screening companies $357,800 (net present value, $251,300), resulting in total compliance costs of $12.74 million (net present value, $8.85 million).

The FAA believes that this alternative would not enhance security. Because air carriers are ultimately responsible for ensuring the safe and proper screening of persons and property, the FAA believes that it is important to ensure air carrier involvement with critical aspects of this rulemaking. Removing this monitoring requirement would strongly diminish the emphasis and importance that this proposed rule places on air carrier oversight. In addition, retaining the monitoring requirement helps to support the concept of a balance of responsibilities between screening companies and the air carriers for which they screen. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 3.—The FAA considered not requiring that CSS's and shift supervisors of smaller screening companies complete leadership training.

The proposal would require persons with supervisory screening duties to have initial and recurrent training that includes leadership and management subjects. All CSS's and shift supervisors would be required to take annual classes in leadership training, which would be a new requirement. Under this alternative, small screening companies would not be required to have their CSS's and shift supervisors take this training. This alternative would result in cost savings to all small screening companies. These companies would no longer need to pay to have their personnel take these classes or pay for leadership training instructors. Over 10 years, this alternative would save all small screening companies $292,900 (net present value, $205,000), resulting in total compliance costs of $12.80 million (net present value, $8.89 million).

The FAA believes that this alternative would harm security. Security is best served when competent, qualified leadership exists at all locations, whether large or small, busy or not busy. There are certain core skills that CSS's and shift supervisors need in order to perform their responsibilities effectively. Hence, under this alternative, there would not be consistency of leadership at the different screening checkpoints. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 4.—The FAA considered not requiring that smaller screening companies obtain air carrier approval before submitting their security program amendments to the FAA.

The proposal would require screening companies to include in any proposed amendment packages that they send to the FAA a statements that all carriers for which they screen have been advised of the proposed amendments and agree to them. Hence, each screening company would have to send its proposed amendment to every carrier for which it screens and respond to any changes that that carrier proposes. This alternative would result in cost savings to all small screening companies. These screening companies would no longer have to send copies of their proposed amendments to their carriers or respond to their carrier's modifications. Over 10 years, this alternative would save all small screening companies $367,200 (net present value, $258,400), resulting in total compliance costs of $12.73 million (net present value, $8.84 million).

The FAA believes that this alternative would harm security. Air carriers are responsible by statute for screening and would be held responsible along with the screening companies for complying with part 111 and the SSSP. Under this alternative, all carriers would not be informed of all screening-related changes to the applicable SSSP's. The FAA would have a difficult time holding carriers accountable for changes of which they were not made aware; this alternative would ensure that some air carriers are not made aware of all changes. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 5.—The Proposed Rule

This alternative represents the proposed rule for screening companies. Under this alternative, small screening companies would be subject to all aspects of this proposed rulemaking. The cost of compliance expected to be incurred by the 38 small entities subject to the requirements of the proposed rule is estimated to be $13.10 million (net present value, $9.10 million) over the next 10 years. This alternative is preferred, because the FAA believes that it has the best balance between costs and benefits for all screening companies while enhancing aviation safety and security (in the form of risk reduction) for the flying public.

VIII.C. International Trade Impact Statement

In accordance with the Office of Management and Budget memorandum dated March 1983, Federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. Because domestic and international air carriers use screeners, this proposed rule change would have an equal effect on both.

VIII.D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any 1 year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental mandates or private sector mandates.

VIII.E. Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action 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, the FAA has determined that this final rule does not have federalism implications.

List of Subjects

14 CFR Part 108

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

14 CFR Part 109

Administrative practice and procedure, Air carriers, Aircraft, Freight forwarders, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 111

Administrative practice and procedure, Air carriers, Aircraft, Certification requirements, Foreign air carriers, Indirect air carriers, Performance standards, Reporting and recordkeeping requirements, Screening companies, Security measures.

14 CFR Part 129

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

14 CFR Part 191

Air transportation, Security measures.

The Proposed Amendment

For the reasons stated in the preamble, the Federal Aviation Administration proposes to amend 14 CFR chapter I as follows:

PART 108—AIRCRAFT OPERATOR SECURITY

1. The heading for part 108, proposed at 62 FR 41749, continues to read as set forth above.

1a. The authority citation for part 108, proposed at 62 FR 41749, continues to read as follows:

Authority: 49 U.S.C. 106(g); 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

2. Section 108.5, proposed at 62 FR 41750, is amended by revising paragraphs (a) and (b) to read as follows:

§ 108.5 Inspection authority.

(a) Each air carrier shall allow the Administrator, including FAA special agents to make any inspections or tests at any time or place to determine compliance of an airport operator, air carrier, foreign air carrier, screening company, or other airport tenant with—

(1) This part;

(2) Part 111 of this chapter;

(3) The air carrier security program;

(4) Applicable screening company security program(s);

(5) 49 CFR part 175, which relates to the carriage of hazardous materials by aircraft; and

(6) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each air carrier shall provide evidence of compliance with this part, part 111 of this chapter, its air carrier security program, and its screening company security program(s).

* * * * *

3. Section 108.103, proposed at 62 FR 41751, is amended by adding new paragraphs (b)(14) and (b)(15) to read as follows:

§ 108.103 Form, content, and availability.

* * * * *

(b) * * *

(14) A description of how the air carrier will provide oversight to each screening company performing screening on its behalf.

(15) A description of how the air carrier will evaluate and test screening performance.

* * * * *

4. Section 108.201, proposed at 62 FR 41752, is amended by revising paragraph (a); removing paragraph (g); redesignating paragraph (h) as new paragraph (g) and revising it; and by adding new paragraphs (h), (i), (j), (k), (l), (m), and (n) to read as follows:

§ 108.201 Screening of persons and property, and acceptance of cargo.

(a) Each air carrier required to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its approved security program and its screening company approved security program(s) to inspect each person entering a sterile area and to inspect each person's accessible property.

* * * * *

(g) Each air carrier required to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its approved security program and its screening company approved security program(s) to prevent the carriage of explosives or incendiaries onboard a passenger aircraft.

(h) Except as provided in § 111.109(k) of this chapter each air carrier required to conduct screening of persons and property at locations within the United States under a security program shall either hold a screening company certificate issued under part 111 of this chapter or shall use another screening company certificated under part 111 of this chapter to inspect persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon. FAA-certified canine teams are not required to be operated by certificated screening companies.

(i) Each air carrier shall ensure that each screening company performing screening on its behalf conducts such screening in accordance with part 111 of this chapter, the screening company's security program, and the screening company's operations specifications.

(j) Each air carrier required to conduct screening under this part shall provide oversight to each screening company performing screening on its behalf as specified in the air carrier's security program.

(k) Each air carrier required to conduct screening under a security program shall:

(1) Maintain at least one complete copy of each of its screening companies' security programs at its principal business office;

(2) Have available complete copies or the pertinent portions of its screening companies' security programs or appropriate implementing instructions at each location where the screening companies conduct screening for the air carrier;

(3) Make copies of its screening companies' security programs available for inspection by an FAA special agent upon request;

(4) Restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs to persons with a need to know as described in part 191 of this chapter; and

(5) Refer requests for such information by other persons to the Administrator.

(l) Each air carrier required by the Administrator to implement additional security measures to maintain system performance shall notify the public by posting signs at affected locations as specified in its security program.

(m) At screening locations outside the United States at which an air carrier has operational control over screening, the air carrier shall screen as follows:

(1) The air carrier shall carry out and comply with all relevant sections of part 111 of this chapter, except for those requirements related to screening company certification, to the extent allowable by local law.

(2) The air carrier may use screeners who do not meet the requirements of § 111.205(a)(3) of this chapter provided that at least one representative of the air carrier who has the ability to read and speak English functionally is present while the air carrier's passengers are undergoing security screening.

(3) In the event that an air carrier is unable to implement any of the requirements for screening, the air carrier shall notify the Administrator of those air carrier stations or screening locations so affected.

(n) The air carrier shall notify the Administrator of any screening locations outside the United States at which it does have operational control.

5. Section 108.203, proposed at 62 FR 41752, is revised to read as follows:

§ 108.203 Use of metal detection devices.

(a) No air carrier may use a metal detection device to inspect passengers, accessible property, or checked baggage unless specifically authorized under a security program required under this part. No air carrier may use such a device contrary to its approved security program or its screening companies' approved program(s).

(b) Metal detection devices shall meet the calibration standards established by the Administrator in the screening company approved security program(s).

6. Section 108.205, proposed at 62 FR 41753, is amended by revising paragraph (a) introductory text, removing paragraph (a)(2), redesignating paragraph (a)(3) as new paragraph (a)(2) and revising it, and revising paragraph (h) to read as follows:

§ 108.205 Use of X-ray systems.

(a) No air carrier may use any X-ray system within the United States or under the air carrier's operational control outside the United States to inspect accessible property or checked articles unless specifically authorized under a security program required by this part. No air carrier may use such a system in a manner contrary to its approved security program or its screening company approved security program(s). The Administrator authorizes an air carrier to use X-ray systems for inspecting accessible property or checked articles under an approved security program if the air carrier shows that:

* * * * *

(2) The system meets the imaging requirements set forth in the approved screening company's standard security program.

* * * * *

(h) Unless otherwise authorized by the Administrator, each air carrier shall ensure that each X-ray system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated X-ray threat image projection data will be collected as specified in the air carrier's security program and in the responsible screening company's security program.

(2) The air carrier shall make X-ray threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

7. Section 108.207, proposed at 62 FR 41753, is revised to read as follows:

§ 108.207 Use of explosives detection systems.

(a) When the Administrator shall require by an amendment under § 108.105, each air carrier required to conduct screening under a security program shall use an explosives detection system that has been approved by the Administrator to screen checked baggage on each international flight in accordance with its security program and its screening companies' security programs.

(b) Unless otherwise authorized by the Administrator, each air carrier shall ensure that each explosives detection system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated explosives detection system threat image projection data will be collected as specified in the air carrier's security program and in the responsible screening company's security program.

(2) The air carrier shall make explosives detection system threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

§ 108.209 [Removed and Reserved]

8. Section 108.209, proposed at 62 FR 41753, is removed and reserved.

9. Section 108.227, proposed at 62 FR 41756, is amended by revising paragraph (b) to read as follows:

§ 108.227 Training and knowledge of persons with security-related duties.

* * * * *

(b) Each air carrier shall ensure that individuals performing security-related functions for the air carrier have knowledge of the provisions of this part, applicable security directives and information circulars promulgated pursuant to § 108.305, the approved airport security program, the air carrier's approved security program, and the screening company approved security program(s) to the extent that such individuals need to know in order to perform their duties.

* * * * *

10. A new § 108.229 is added to subpart C, proposed at 62 FR 41752, to read as follows:

§ 108.229 Monitoring of screener training tests.

Each air carrier shall monitor each screener training test required under § 111.215(a) and (c) of this chapter for all screening companies that conduct screening on its behalf in accordance with its security program. Each test monitor shall meet the following qualifications:

(a) Be an air carrier employee who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor, unless otherwise authorized by the Administrator.

(b) Be familiar with the testing and grading procedures contained in the screening company's security program.

(c) Meet other qualifications set forth in the screening company's security program.

11. Amend § 108.301, proposed at 62 FR 41757, by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 108.301 Security Coordinators.

* * * * *

(b) * * *

(1) A review of all security-related functions for effectiveness and compliance with this part, the air carrier's approved security program, part 111 of this chapter, its screening company approved security program(s), and applicable security directives.

(2) Immediate initiation of corrective action for each instance of noncompliance with this part, the air carrier's approved security program, part 111 of this chapter, its screening company approved security program(s), and applicable security directives. At foreign airports where such security measures are provided by agencies or contractors of host governments, the air carriers shall notify the Administrator for assistance in resolving noncompliance issues.

* * * * *

12. Revise part 109 to read as follows:

PART 109—INDIRECT AIR CARRIER SECURITY

Subpart A—General

Sec.
109.1 Applicability.
109.3 Definitions.
109.5 Inspection authority.
109.7 Falsification.

Subpart B—Security Program

109.101 Adoption and implementation
109.103 Form, content, and availability.
109.105 Approval and amendments.

Subpart C—Screening and Operations

109.201 Screening of cargo
109.203 Screening certificate, performance, and oversight.
109.205 Monitoring of screener training tests.
109.207 Use of X-ray systems.

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

Subpart A—General

§ 109.1 Applicability.

This part prescribes aviation security rules governing each indirect air carrier (IAC) engaged indirectly in the air transportation of property.

§ 109.3 Definitions.

Terms defined in parts 107, 108, 111, and 129 of this chapter apply to this part. For purposes of this part, parts 107, 108, 111, and 129 of this chapter, and security programs required by these parts, the following definition also applies:

Indirect air carrier means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of a passenger air carrier. This does not include the U.S. Postal Service (USPS) or its representative while acting on the behalf of the USPS.

§ 109.5 Inspection authority.

(a) Each indirect air carrier shall allow the Administrator, including FAA special agents to make any inspections or tests at any time or place to determine compliance of the indirect air carrier with:

(1) This part;

(2) Part 111 of this chapter;

(3) The indirect air carrier security program;

(4) Its screening companies' security programs; and

(5) 49 CFR parts 100–199, which relate to handling and carrying hazardous materials.

(b) At the request of the Administrator, each indirect air carrier shall provide evidence of compliance with this part, part 111 of this chapter, its indirect air carrier security program, and its screening company security program(s).

§ 109.7 Falsification.

No person shall make or cause to be made any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program or any amendment thereto under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part or to exercise any privileges under this part.

(c) Any reproduction or alteration for fraudulent purpose of any report, record, or security program issued under this part.

Subpart B—Security Program

§ 109.101 Adoption and implementation.

Each indirect air carrier shall adopt and carry out a security program that meets the requirements of § 109.103.

§ 109.103 Form, content, and availability.

(a) The security program required under § 109.101 shall—

(1) Be designed to detect and prevent the introduction of any unauthorized explosive or incendiary into cargo intended for carriage by air;

(2) Provide that upon receipt of an approved security program or security program amendment from the FAA, the indirect air carrier shall acknowledge receipt of the approved security program or amendment to the Assistant Administrator in writing and signed by the indirect air carrier or any person delegated authority in this matter within 72 hours;

(3) Include the items listed in paragraph (b) of this section as required by § 109.101;

(4) Be in writing and signed by the indirect air carrier or any person delegated authority in this matter; and

(5) Be approved by the Administrator.

(b) The security program shall include—

(1) A system of security safeguards acceptable to the Administrator;

(2) The procedures and descriptions of the facilities and equipment used to perform screening functions specified in § 109.201;

(3) The procedures and descriptions of the equipment used to comply with the requirements of § 109.207 regarding the use of X-ray systems should the indirect air carrier elect to perform screening functions;

(4) A description of how the indirect carrier will provide oversight to each screening company performing screening on its behalf should the indirect air carrier elect to perform screening functions; and

(5) A description of how the indirect air carrier will evaluate and test the performance of screening should the indirect air carrier elect to perform screening functions.

(c) Each indirect air carrier having an approved security program shall—

(1) Maintain at least one complete copy of its security program at its principal business office;

(2) Have available a complete copy or the pertinent portions of its approved security program or appropriate implementing instructions at each office where package cargo is accepted;

(3) Make a copy of its approved security program available for inspection upon the request of an FAA special agent;

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with an operational need to know as described in part 191 of this chapter; and

(5) Refer requests for such information by other persons to the Administrator.

§ 109.105 Approval and amendments.

(a) *Approval of Security Program.* Unless otherwise authorized by the Assistant Administrator, each indirect air carrier required to have a security program under this part shall submit its proposed security program to the Assistant Administrator for approval at least 30 days before the date of intended operations. Such request shall be processed as follows:

(1) Within 30 days after receiving the proposed indirect air carrier security program, the Assistant Administrator will either approve the program or give the indirect air carrier written notice to modify the program to comply with the applicable requirements of this part.

(2) Within 30 days of receiving a notice to modify, the indirect air carrier may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify. A petition for reconsideration shall be filed with the Assistant Administrator. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator will either amend or withdraw the notice or transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the notice to modify or by affirming the notice to modify.

(b) *Amendment requested by an indirect air carrier.* An indirect air carrier may submit a request to the Assistant Administrator to amend its approved security program as follows:

(1) The application shall be filed with the Assistant Administrator at least 30 days before the date that it proposes for the amendment to become effective unless a shorter period is allowed by the Assistant Administrator.

(2) Within 15 days after receiving a proposed amendment, the Assistant Administrator will either approve or deny the request to amend in writing.

(3) An amendment to an indirect air carrier security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it and if the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the indirect air carrier may petition the Administrator to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator will either approve the request to amend or will transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment or by affirming the denial.

(c) *Amendment by the FAA.* If safety and the public interest require an amendment, the Assistant Administrator may amend an approved security program as follows:

(1) The Assistant Administrator will notify the indirect air carrier in writing of the proposed amendment, fixing a period of not less than 30 days within which the indirect air carrier may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Assistant Administrator will notify the indirect air carrier of any amendment adopted or will rescind the notice. If the amendment is adopted, it will become effective not less than 30 days after the indirect air carrier receives the notice of amendment unless the indirect air carrier petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The indirect air carrier shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration will stay the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator will either amend or withdraw the notice or will transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the notice or by affirming the amendment.

(d) *Emergency amendments.* If the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment that will become effective without stay on the date that the indirect air carrier receives notice of it. In such a case, the Assistant Administrator shall incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The indirect air carrier may file a petition for reconsideration under paragraph (c) of this section; however, this will not stay the effectiveness of the emergency amendment.

Subpart C—Screening and Operations

§ 109.201 Screening of cargo.

(a) Each indirect air carrier that elects to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its approved security program and its screening company approved security program(s) to inspect cargo and prevent the carriage of explosives or incendiaries onboard any aircraft.

(b) Each indirect air carrier that elects to conduct screening under a security program shall detect and prevent the carriage of any explosive or incendiary in cargo aboard aircraft and into sterile areas.

§ 109.203 Screening certificate, performance, and oversight.

(a) Except as provided in § 111.109(k) of this chapter, each indirect air carrier that conducts screening of cargo for locations within the United States under a security program shall either hold a screening company certificate issued under part 111 of this chapter or use another screening company certificated under part 111 of this chapter to inspect property for the presence of any unauthorized explosive or incendiary. FAA-certified canine teams are not required to be operated by certificated screening companies.

(b) Each indirect air carrier shall ensure that each screening company performing screening on the indirect air carrier's behalf conducts such screening in accordance with part 111 of this chapter, the screening company's security program, and the screening company's operations specifications.

(c) Each indirect air carrier that conducts screening under this part shall provide oversight to each screening company performing screening on behalf of the indirect air carrier as specified in the indirect air carrier's security program.

(d) Each indirect air carrier required to conduct screening under a security program shall:

(1) Maintain at least one complete copy of each of its screening companies' security programs at its principal business office;

(2) Have available complete copies or the pertinent portions of its screening companies' security programs or

appropriate implementing instructions at each location where the screening companies conduct screening for the indirect air carrier;

(3) Make copies of its screening companies' security programs available for inspection by an FAA special agent upon request;

(4) Restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs to persons with a need to know as described in part 191 of this chapter; and

(5) Refer requests for such information by other persons to the Administrator.

§ 109.205 Monitoring of screener training tests.

Unless otherwise authorized by the Administrator, each indirect air carrier shall monitor each screener training test required under § 111.215(a) and (c) of this chapter for all screening companies that conduct screening on its behalf in accordance with its security program. Each test monitor shall meet the following qualifications:

(a) Be an indirect air carrier employee who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor, unless otherwise authorized by the Administrator.

(b) Be familiar with the testing and grading procedures contained in the screening company's security program.

(c) Meet other qualifications set forth in the screening company's security program.

§ 109.207 Use of X-ray systems.

(a) No indirect air carrier may use any X-ray system to inspect cargo unless specifically authorized under a security program required by this part. No indirect air carrier may use such a system in a manner contrary to its screening company's approved security program. The Administrator authorizes an indirect air carrier to use X-ray systems for inspecting cargo under an approved screening security program if the indirect air carrier shows that—

(1) The system meets the standards for cabinet X-ray systems designed primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40; and

(2) The system meets the imaging requirements set forth in the approved screening security program.

(b) No indirect air carrier may use any X-ray system unless a radiation survey is conducted within the preceding 12 calendar months which shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) No indirect air carrier may use any X-ray system after the system has been installed at a screening location or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the indirect air carrier shows that it can be moved without altering its performance.

(d) No indirect air carrier may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA unless the FDA has advised the FAA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) No indirect air carrier may use any X-ray system to inspect cargo unless a sign is posted in a conspicuous place at the receiving area or written notification is provided to inform individuals that items are being inspected by an X-ray and advise them to remove all X-ray, scientific, and high-speed film from their cargo before inspection. This sign or written notification also shall advise individuals that they may request that inspections be made of their photographic equipment and film packages without exposure to X-ray systems. If an X-ray system exposes any cargo to more than 1 milliroentgen during inspection, the indirect air carrier shall post a sign that advises individuals to remove film of all kinds from their cargo before inspection.

(f) Each indirect air carrier shall maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and shall make it available for inspection upon request by the Administrator at each of the following locations:

(1) The indirect air carrier's principal business office.

(2) The place where the X-ray system is in operation.

(g) The American Society for Testing and Materials Standard F792–88, ''Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas,'' is incorporated by reference in this section and made a part of this section pursuant to 5 U.S.C. 552(a)(1). All persons affected by this section may obtain copies of the standard from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(h) Unless otherwise authorized by the Administrator, each indirect air carrier shall ensure that each X-ray system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated X-ray threat image projection data will be collected as specified in the indirect air carrier security program and in the responsible screening company's security program.

(2) The indirect air carrier shall make X-ray threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

13. A new part 111 is added to subchapter F to read as follows:

PART 111—SCREENING COMPANY SECURITY

Subpart A—General

Sec.

111.1 Applicability.
111.3 Definitions.
111.5 Inspection authority.
111.7 Falsification.
111.9 Prohibition against interference with screening personnel.

Subpart B—Security Program, Certificate, and Operations Specifications

111.101 Performance of screening.
111.103 Security program: Adoption and implementation.
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111.107 Security program: Approval and amendments.
111.109 Screening company certificate.
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111.113 Operations specifications: Form, content, and availability.
111.115 Operations specifications: Approval, amendments, and limitations.
111.117 Oversight by air carriers, foreign air carriers, or indirect air carriers.
111.119 Business office.

Subpart C—Operations

111.201 Screening of persons and property and acceptance of cargo.
111.203 Use of screening equipment.
111.205 Employment standards for screening personnel.
111.207 Disclosure of sensitive security information.
111.209 Screening company management.
111.211 Screening company instructor qualifications.
111.213 Training and knowledge of persons with screening-related duties.
111.215 Training tests: Requirements.
111.217 Training tests: Cheating and other unauthorized conduct.
111.219 Screener letter of completion of training.
111.221 Screener and supervisor training records.
111.223 Automated performance standards.

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44707, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

Subpart A—General

§ 111.1 Applicability.

This part prescribes the requirements for the certification and operation of screening companies. This part applies to all of the following:

(a) Each screening company that screens for an air carrier under part 108 of this chapter, for an indirect air carrier under part 109 of this chapter, or for a foreign air carrier under part 129 of this chapter.

(b) All persons conducting screening within the United States under this part, part 108, part 109, or part 129 of this chapter by inspecting persons or property for the presence of unauthorized explosives, incendiaries, or deadly or dangerous weapons.

(c) Each air carrier, foreign air carrier, and indirect air carrier required to conduct screening under this chapter.

(d) All persons who interact with screening personnel during screening.

§ 111.3 Definitions.

Terms defined in parts 107, 108, 109, and 129 of this chapter apply to this part. For purposes of this part, parts 107, 108, 109, and 129 of this chapter, and security programs under these parts, the following definitions also apply:

Carrier means an air carrier under part 108 of this chapter, indirect air carrier under part 109 of this chapter, or foreign air carrier under part 129 of this chapter.

Screening company means a carrier or other entity that inspects persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon, as required under this part, before entry into a sterile area or carriage aboard an aircraft.

Screening company security program means the security program approved by the Administrator under this part.

Screening location means each site at which persons or property are inspected for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon.

§ 111.5 Inspection authority.

(a) Each screening company shall allow the Administrator to make inspections or tests at any time or place to determine compliance with all of the following:

(1) This part.

(2) The screening company's security program.

(3) The screening company's operations specifications.

(4) Part 108, 109, or 129 of this chapter, as applicable.

(b) At the request of the Administrator, a screening company shall provide evidence of compliance with this part, its security program, and its operations specifications.

§ 111.7 Falsification.

No person may make or cause to be made any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, certificate, or operations specifications or any amendment thereto under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part or to exercise any privileges under this part.

(c) Any reproduction or alteration for fraudulent purpose of any report, record, security program, certificate, or operations specifications issued under this part.

§ 111.9 Prohibition against interference with screening personnel.

No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties.

Subpart B—Security Program, Certificate, and Operations Specifications

§ 111.101 Performance of screening.

Each screening company shall conduct screening and screener training required under this part in compliance with the requirements of this part, its approved security program, its approved operations specifications, and applicable portions of security directives and emergency amendments to security programs issued under part 108, 109, 129 of this chapter, and this part.

§ 111.103 Security program: Adoption and implementation.

Each screening company shall adopt and carry out an FAA-approved security program that meets the requirements of § 111.105.

§ 111.105 Security program: Form, content, and availability.

(a) A security program required under § 111.103 shall:

(1) Provide for the safety of persons and property traveling on flights provided by air carriers and/or foreign air carriers for which the screening company screens against acts of criminal violence and air piracy and the introduction of explosives, incendiaries, or deadly or dangerous weapons aboard aircraft.

(2) Provide that upon receipt of an approved security program or security program amendment, the screening company screening performance coordinator shall acknowledge receipt of the approved security program or amendment in a signed, written statement to the FAA within 72 hours.

(3) Include the items listed in paragraph (b) of this section as required by § 111.103.

(4) Be approved by the Administrator.

(b) The security program shall include all of the following:

(1) The procedures used to perform screening functions specified in § 111.201.

(2) The testing standards and training guidelines for screening personnel and instructors.

(3) The performance standards and operating requirements for threat image projection systems.

(c) Each screening company having an approved security program shall:

(1) Maintain at least one complete copy of the security program at its principal business office.

(2) Have available a complete copy of its approved security program at each airport served.

(3) Make a copy of its approved security program available for inspection by an FAA special agent upon request.

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with a need to know as described in part 191 of this chapter.

(5) Refer requests for such information by other persons to the Administrator.

§ 111.107 Security program: Approval and amendments.

(a) *Approval of security program.* Unless otherwise authorized by the Assistant Administrator, each screening company required to have a security program under this part shall within 30 days of receiving the screening standard security program from the FAA submit a signed, written statement to the Assistant Administrator indicating one of the following: the screening company will adopt the Screening Standard Security Program as is, or the screening company will adopt the Screening Standard Security Program after making amendments to it. FAA approval of a security program will be as follows:

(1) If the screening company chooses to adopt the Screening Standard Security Program as is, the granting of the screening company certificate by the Assistant Administrator will serve as

FAA approval of the screening company's security program.

(2) If the screening company chooses to adopt the Screening Standard Security Program after making amendments to it or to submit its own security program that meets the requirements of § 111.103 to the FAA, the request will be processed as follows:

(i) Within 30 days after receiving the screening company's security program, the Assistant Administrator will either approve the program or will give the screening company written notice to modify its program to comply with the applicable requirements of this part.

(ii) Within 30 days of receiving a notice to modify, the screening company may either submit a modified security program to the Assistant Administrator for approval or petition the Administrator to reconsider the notice to modify. A petition for reconsideration shall be filed with the Assistant Administrator. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(iii) Upon receipt of a petition for reconsideration, the Assistant Administrator will amend or withdraw the notice or will transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by directing the Assistant Administrator to withdraw or amend the notice to modify or by affirming the notice to modify.

(iv) The granting of a screening company certificate by the Assistant Administrator will serve as FAA approval of a screening company's security program.

(b) *Amendment requested by a screening company.* A screening company may submit a request to the Assistant Administrator to amend its approved security program as follows:

(1) The application shall be filed with the Assistant Administrator at least 45 days before the date that it proposes for the amendment to become effective unless a shorter period is allowed by the Assistant Administrator. The screening company shall include with its application a statement that all air carriers for which it screens have been advised of the proposed amendment and have no objection to the proposed amendment. The screening company shall include the name and phone number of each individual from each air carrier who was advised.

(2) Within 30 days after receiving a proposed amendment, the Assistant Administrator will either approve or deny the request to amend in writing.

(3) An amendment to a screening company security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it and if the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the screening company may petition the Administrator to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator will either approve the request to amend or will transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment or by affirming the denial.

(c) *Amendment by the FAA.* If safety and the public interest require an amendment, the Assistant Administrator may amend an approved security program as follows:

(1) The Assistant Administrator will notify the screening company and carrier(s) in writing of the proposed amendment, fixing a period of not less than 30 days within which the screening company and carrier(s) may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Assistant Administrator will notify the screening company and carrier(s) of any amendment adopted or will rescind the notice. If the amendment is adopted, it will become effective not less than 30 days after the screening company and carrier(s) receive the notice of amendment unless the screening company or carrier(s) petition(s) the Administrator to reconsider no later than 15 days before the effective date of the amendment. The screening company or carrier(s) shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator will either amend or withdraw the notice or will transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the notice or by affirming the amendment.

(d) *Emergency amendments.* Notwithstanding paragraphs (a), (b), and (c) of this section, if the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment that will become effective without stay on the date that the screening company and carrier(s) receive notice of it. In such a case, the Assistant Administrator shall incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The screening company or carrier(s) may file a petition for reconsideration under paragraph (c) of this section; however, this will not stay the effectiveness of the emergency amendment.

§ 111.109 Screening company certificate.

(a) *Certificate required.* No person may perform any screening required under this part or part 108, 109 or 129 of this chapter except under the authority of and in accordance with the provisions of a screening company certificate issued under this part.

(b) *Application.* An application for a provisional screening company certificate, a screening company certificate, or a screening company certificate renewal is made in a form and a manner prescribed by the Administrator. The application shall include at a minimum the information that will be placed on the certificate under paragraph (f) of this section and the information that will be contained in the operations specifications under § 111.113(b).

(c) *Issuance and renewal.* An applicant for a provisional screening company certificate, a screening company certificate, or a screening company certificate renewal is entitled to a certificate if the following are met:

(1) The applicant applies for a certificate as provided in this section not less than 90 days before—

(i) The applicant intends to begin screening; or

(ii) The applicant's current certificate expires.

(2) For the issuance of a provisional screening company certificate, the Administrator finds after investigation that the applicant is able to meet the requirements of this part to include adopting and carrying out an FAA-approved security program and approved operations specifications.

(3) For the issuance or renewal of a screening company certificate, the Administrator determines that the

applicant has met the requirements of this part, its screening company security program, and its approved operations specifications. The applicant's failure to meet the performance standards set forth in the security program is grounds for denial or withdrawal of the screening company certificate.

(4) The issuance of the certificate is not contrary to the interests of aviation safety and security.

(5) The applicant has not held a provisional or a screening company certificate that was revoked within the previous year, unless otherwise authorized by the Administrator.

(d) *Provisional certificate.* (1) A person who does not hold a screening company certificate may be issued a provisional screening company certificate.

(2) Unless otherwise authorized by the Administrator, the holder of a provisional screening company certificate may not begin screening at any screening location unless it notifies the Administrator 7 days before beginning such screening.

(3) The Administrator may prescribe the conditions under which a provisionally certificated screening company may operate while it is beginning screening at a new location.

(e) *Screening company certificate.* (1) The holder of a provisional screening company certificate may be issued a screening company certificate.

(2) The holder of a screening company certificate may renew its certificate.

(f) *Certificate contents.* A screening company certificate contains the following information:

(1) The name of the screening company and any names under which it will do business as a certificated screening company.

(2) Certificate issuance date.

(3) Certificate expiration date.

(4) Certificate number.

(5) Such other information as the Administrator determines necessary.

(g) *Duration.* (1) Unless sooner suspended, revoked, or surrendered, a provisional screening company certificate will expire at the end of the 12th month after the month in which it was issued.

(2) Unless sooner suspended, revoked, surrendered, or expired under paragraph (g)(3) of this section, a screening company certificate will expire at the end of the 60th month after the month in which it was issued or renewed.

(3) If a screening company has not performed screening on behalf of a carrier during the previous 12 calendar months, its certificate will be deemed to have expired, and the company will no longer be authorized to conduct screening under this part.

(h) *Return of certificate.* The holder of a screening company certificate that is expired, suspended, or revoked shall return it to the Administrator within 7 days.

(i) *Amendment of certificate.* (1) A screening company shall apply for an amendment to its screening company certificate in a form and manner prescribed by the Administrator if it intends to change the name of its screening company, and/or any names under which it will do business as a certificated screening company.

(2) The holder of a screening company certificate requiring amendment shall return the certificate to the Administrator within 7 days for appropriate amendment.

(j) *Inspection.* A screening company certificate shall be made available for inspection upon request by the Administrator.

(k) *Compliance dates.* A carrier may use a company not certificated under this part to perform screening required under part 108, part 109, or part 129 of this chapter if the company performed required screening for a carrier at any time on or after [date 1 year before effective date of final rule] through [effective date of final rule] and if all of the following apply:

(1) The company submits an application as required by paragraph (b) of this section for a provisional certificate on or before [date 60 days after effective date of the final rule].

(2) The FAA has not issued under this part a denial of a screening company certificate to the company.

§ 111.111 Operations specifications: Adoption and implementation.

No screening company may perform screening under this part unless the company adopts and complies with operations specifications that meet the requirements of this part.

§ 111.113 Operations specifications: Form, content, and availability.

(a) Operations specifications required by this part shall—

(1) Be in writing and signed by the screening company;

(2) Include the items listed in paragraph (b) of this section; and

(3) Be approved by the Administrator.

(b) Operations specifications required by this part shall include—

(1) Locations at which the Administrator has authorized a company to conduct screening required under this part, part 108, part 109, or part 129 of this chapter;

(2) The types of screening that the Administrator has authorized the company to perform which include persons, accessible property, checked baggage, and cargo;

(3) The equipment and methods of screening that the Administrator has authorized the company to operate and carry out;

(4) The title and name of the person required by § 111.209(b);

(5) Procedures to notify the Administrator and any carrier for which it is performing screening in the event that the procedures, facilities, or equipment that it is using are not adequate to perform screening under this part;

(6) The curriculum used to train screeners;

(7) A statement signed by the person required by § 111.209(b) on behalf of the company confirming that the information contained in the operations specifications is true and correct; and

(8) Any other subjects that the Administrator deems necessary.

(c) Each screening company having approved operations specifications shall—

(1) Maintain at least one complete copy of the operations specifications at its principal business office;

(2) Maintain a complete copy or the pertinent portions of its approved operations specifications at each airport where it conducts security training;

(3) Ensure that its operations specifications are amended so as to maintain current descriptions of the screening company and its services, procedures, and facilities;

(4) Make its operation specifications available to the Administrator for inspection upon request;

(5) Provide current operations specifications to each carrier for which it screens;

(6) With the exception of information described in paragraph (b)(1) of this section, restrict the availability of information contained in the operations specifications to those persons with an operational need to know as provided in § 191.5(b) of this chapter; and

(7) Refer requests for such information by other persons to the Administrator.

§ 111.115 Operations specifications: Approval, amendments, and limitations.

(a) Each applicant for a provisional screening company certificate shall submit its proposed operations specifications to the Administrator when applying for a provisional screening company certificate. After receiving the proposed operations specifications, the Administrator will approve the operations specifications or will notify the applicant to modify its operations specifications to comply

with the applicable requirements of this part. The applicant may petition the Administrator to reconsider the notice to modify. A petition shall be submitted no later than 15 days from the date that a notice to modify is issued.

(b) The Administrator may amend approved operations specifications if it is determined that safety and the public interest require the amendment as follows:

(1) The Administrator notifies the screening company in writing of the proposed amendment, fixing a period of not less than 30 days within which it may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Administrator notifies the screening company of any amendment adopted or rescinds the notice. The amendment will become effective not less than 30 days after the screening company certificate holder receives the notice unless the certificate holder petitions the Administrator to reconsider the amendment, in which case the effective date will be stayed by the Administrator.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedures in this paragraph impracticable or contrary to safety or the public interest, the Administrator may issue an amendment that will become effective without stay on the date that a screening company receives notice of it. In such a case, the Administrator will incorporate the findings and a brief statement of the reasons for it in the notice of the amendment to be adopted.

(c) A screening company may submit a request to the Assistant Administrator to amend its operations specifications. The application shall be filed with the Assistant Administrator at least 30 days before the date that it proposes for the amendment to become effective unless a shorter period is allowed by the Assistant Administrator. The Assistant Administrator will approve or deny a request within 15 days after receiving the proposed amendment. Within 30 days after receiving from the Assistant Administrator a notice of refusal to approve an application for amendment, the applicant may petition the Administrator to reconsider the refusal to amend.

(d) The FAA may limit the specific locations at which a screening company may operate if it determines that the company's operations are contrary to the interests of aviation safety and security.

§ 111.117 Oversight by air carriers, foreign air carriers, or indirect air carriers.

(a) Each screening company shall allow any air carrier, foreign air carrier, or indirect air carrier for which it is performing screening under part 108, part 109, or part 129 of this chapter to do the following:

(1) Inspect the screening company's facilities, equipment, and records to determine the screening company's compliance with this part, the screening company's security program, and the screening company's operations specifications.

(2) Test the performance of the screening company using procedures specified in the applicable security program(s).

(b) Each screening company holding a certificate under this part shall provide a copy of each letter of investigation and final enforcement action to each carrier using the screening location where the alleged violation occurred. The copy shall be provided to the applicable carrier's corporate security officer within 3 business days of receipt of the letter of investigation or final enforcement action.

§ 111.119 Business office.

(a) Each screening company shall maintain a principal business office with a mailing address in the name shown on its certificate.

(b) Each screening company shall notify the Administrator before changing the location of its business. The notice shall be submitted in writing at least 30 days before the change.

Subpart C—Operations

§ 111.201 Screening of persons and property and acceptance of cargo.

(a) Each screening company shall use the procedures included in its approved security program to:

(1) Inspect each person entering a sterile area;

(2) Inspect each person's accessible property entering a sterile area; and

(3) Prevent or deter the introduction into a sterile area of any explosive, incendiary, or deadly or dangerous weapon on or about each person or the person's accessible property.

(b) Each screening company shall deny entry into a sterile area at a checkpoint to:

(1) Any person who does not consent to a search of his or her person in accordance with the screening system prescribed in paragraph (a) of this section; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by paragraph (a) of this section.

(c) The provisions of paragraph (a) of this section with respect to firearms and weapons do not apply to the following:

(1) Law enforcement personnel required to carry firearms or other weapons while in the performance of their duties at airports.

(2) Persons authorized to carry firearms in accordance with § 108.213, 108.215, 108.217, or 129.27 of this chapter.

(3) Persons authorized to carry firearms in sterile areas under FAA-approved or FAA-accepted security programs.

(d) Each screening company shall staff the screening locations that it operates with supervisory and nonsupervisory personnel in accordance with the standards specified in its security program.

(e) Each screening company shall use the procedures included in its approved security program to:

(1) Inspect checked baggage, or cargo presented for inspection by a carrier; and

(2) Prevent or deter the carriage of explosives or incendiaries in checked baggage or cargo onboard passenger aircraft.

§ 111.203 Use of screening equipment.

(a) Each screening company shall operate all screening equipment in accordance with its approved security program.

(b) The Administrator authorizes a certificated screening company to use X-ray systems for inspecting property under an approved security program if the screening company shows that:

(1) A program for initial and recurrent training of operators of the system that includes training in radiation safety, the efficient use of X-ray systems, and the identification of unauthorized weapons, explosives, incendiaries, and other dangerous articles is established.

(2) The system meets the imaging requirements set forth in its approved security program.

(c) If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to X-ray or explosives detection systems.

(d) Each screening company shall comply with the X-ray duty time limitations specified in its approved security program.

§ 111.205 Employment standards for screening personnel.

(a) No screening company shall use any person to perform any screening

function in the United States unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience that the screening company has determined to have equipped the person to perform the duties of the screening position.

(2) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(i) Screeners shall be able to identify the components that may constitute an explosive or an incendiary;

(ii) Screeners shall be able to identify objects that appear to match those items described in all current security directives and emergency amendments;

(iii) Screeners operating X-ray and explosives detection system equipment shall be able to distinguish on the equipment monitors the appropriate imaging standards specified in the screening company's approved security program;

(iv) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies;

(v) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint or other screening environment;

(vi) Screeners performing manual searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, cargo, and other objects subject to security processing;

(vii) Screeners performing manual searches of cargo shall be able to use tools that allow for opening and closing boxes, crates, or other common cargo packaging;

(viii) Screeners performing screening of cargo shall be able to stop the transfer of suspect cargo to passenger air carriers; and

(ix) Screeners performing pat-down or hand-held metal detector searches of persons shall have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

(3) The ability to read, speak, write, and understand English well enough to:

(i) Carry out written and oral instructions regarding the proper performance of screening duties;

(ii) Read English language identification media, credentials, airline tickets, documents, air waybills, invoices, and labels on items normally encountered in the screening process;

(iii) Provide direction to and understand and answer questions from English-speaking persons undergoing screening or submitting cargo for screening; and

(iv) Write incident reports and statements and log entries into security records in the English language.

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the screening company's security program. Initial and recurrent training for all screeners shall include, but is not limited to, the following:

(i) The conduct of screening of persons in a courteous and efficient manner.

(ii) Compliance with the applicable civil rights laws of the United States.

(5) For persons with supervisory screening duties, initial and recurrent training shall include leadership and management subjects as specified in the screening company's security program.

(b) Notwithstanding the provisions of paragraph (a)(4) of this section, the screening company may use a person during the on-the-job portion of training to perform security functions provided that the person is closely supervised and does not make independent judgments as to whether persons or property may enter sterile areas or aircraft or whether cargo may be loaded aboard aircraft without further inspection.

(c) No screening company shall use a person to perform a screening function after that person has failed an operational test related to that function until that person has successfully completed the remedial training specified in the screening company's security program.

(d) Each air carrier with a ground security coordinator and each foreign air carrier and indirect air carrier with a screening supervisor shall ensure that that person conducts and documents an annual evaluation of each person assigned screening duties. The ground security coordinator or supervisor may continue that person's employment in a screening capacity only upon determining that the person:

(1) Has not suffered a significant diminution of any physical ability required to perform a screening function since the last evaluation of those abilities;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in the approved screening company's security program; and

(3) Demonstrates the current knowledge and skills necessary to perform screening functions courteously, vigilantly, and effectively.

§ 111.207 Disclosure of sensitive security information.

(a) Each screening company shall ensure that for each screener trainee who will be required to have an employment history verification, the steps in § 107.207(c)(1), (2), (3), and (4), or § 108.221(c)(1), (2), (3), and (4) of this chapter have been completed before the screener trainee receives sensitive security information as defined in part 191 of this chapter.

(b) If the employee application, employment verification, or criminal history record check has disclosed that the trainee has a history of a disqualifying crime as provided in § 107.207(b)(2) or § 108.221(b)(2) of this chapter, no sensitive security information may be provided to that trainee.

(c) If a criminal history record check has been requested under § 108.221(c)(5) of this chapter, the trainee may receive sensitive security information unless and until the results of the record check disclose a disqualifying crime.

§ 111.209 Screening company management.

(a) Each screening company shall have sufficient qualified management and technical personnel to ensure the highest degree of safety in its screening.

(b) Each screening company shall designate a screening performance coordinator (SPC) as the primary point of contact for security-related activities and communications with the FAA and carrier.

(1) To serve as a screening performance coordinator under this part, a person shall have the following:

(i) Except as provided in paragraph (e) of this section, at least 1 year of supervisory or managerial experience within the last 3 years in a position that exercised control over any aviation security screening required under this part or part 108, 109, or 129 of this chapter.

(ii) Successfully completed the initial security screener training course, including the end of course FAA exam.

(2) Each screening company shall notify the Administrator within 10 days of any screening performance coordinator change or any vacancy.

(c) Each screening performance coordinator shall to the extent of his or her responsibilities have a working knowledge of the following with respect to the screening company's operations:

(1) This part.

(2) Part 108, 109, or 129 and part 191 of this chapter.

(3) The screening company's security program.

(4) The screening company's operations specifications.

(5) All relevant statutes.

(6) All relevant technical information and manuals regarding screening equipment, security directives, advisory circulars, and information circulars on aviation security.

(d) Before [date 3 years after effective date of final rule], the Administrator may authorize an individual who does not meet the standard required in paragraph (b)(1)(i) of this section to serve as the screening performance coordinator for screening under part 109 of this chapter.

§ 111.211 Screening company instructor qualifications.

(a) No screening company shall use any person as a classroom instructor unless that person meets the requirements of this part.

(b) To be eligible for designation as a security screening instructor for a course of training, a person shall have a minimum of 40 hours of actual experience as a security screener making independent judgments, unless otherwise authorized by the Administrator.

(c) An instructor shall pass the FAA screener knowledge-based and performance tests for each type of screening to be taught and for the procedures and equipment for which the instructor will provide training, unless otherwise authorized by the Administrator.

(d) An instructor may not be used in an approved course of training until he or she has been briefed regarding the objectives and standards of the course.

(e) This section does not prevent a screening company's using guest speakers or persons in training as instructors if they are under the direct supervision of a qualified security screening instructor who is readily available for consultation.

§ 111.213 Training and knowledge of persons with screening-related duties.

(a) No screening company may use any screener, screener-in-charge, and checkpoint security supervisor unless that person has received initial and recurrent training as specified in the screening company's approved security program, including the responsibilities in § 111.105.

(b) Each screening company shall submit its training programs for screeners, screeners-in-charge, and checkpoint security supervisors for approval by the Administrator.

(c) Each screening company shall ensure that individuals performing as screeners, screeners-in-charge, and checkpoint security supervisors for the screening company have knowledge of the provisions of this part, the screening company's security program, and applicable security directive, emergency amendment, and information circular information to the extent that such individuals need to know in order to perform their duties.

§ 111.215 Training tests: Requirements.

(a) Each screening company shall ensure that each screener trainee passes an FAA screener readiness test for each type of screening to be performed and for the procedures and equipment to be used prior to beginning on-the-job training.

(b) Each screening company shall ensure that each screener completes 40 hours of on-the-job training and passes an FAA on-the-job training test before exercising independent judgment as a screener.

(c) Each screening company shall ensure that each screener passes an FAA review test at the conclusion of his or her recurrent training.

(d) Unless otherwise authorized by the Administrator, each screening company shall use computer-based testing to administer FAA tests for screener readiness, on-the-job training, and recurrent training.

(e) Each screening company shall ensure that each test that it administers under paragraphs (a) and (c) of this section is monitored by an employee of the carrier for which it screens.

§ 111.217 Training tests: Cheating or other unauthorized conduct.

Except as authorized by the Administrator, no person may:

(a) Copy or intentionally remove a knowledge-based or performance test under this part;

(b) Give to another or receive from another any part or copy of that test;

(c) Give help on that test to or receive help on that test from any person during the period that the test is being given;

(d) Take any part of that test on behalf of another person;

(e) Use any material or aid during the period that the test is being given; or

(f) Cause, assist, or participate intentionally in any act prohibited by this paragraph.

§ 111.219 Screener letter of completion of training.

(a) Each screening company shall issue letters of completion of training to screeners, screeners-in-charge, and checkpoint security supervisors upon each successful completion of their approved initial, recurrent, and specialized courses of training.

(b) Each letter shall contain at least the following information:

(1) The name of the company and the number of the screening company certificate.

(2) The name of the screener to whom it is issued.

(3) The course of training for which it is issued.

(4) The type(s) of screening the screener has been trained to perform, which may include persons, accessible property, checked baggage, and cargo.

(5) The equipment and methods of screening that the screener has been trained to operate and carry out.

(6) The date of completion.

(7) A statement that the trainee has satisfactorily completed each required stage of the approved course of training, including the tests for those stages.

(8) The signature of a supervisory-level individual (ground security coordinator, checkpoint security supervisor, or screener-in-charge).

§ 111.221 Screener and supervisor training records.

(a) Whenever a screener, screener-in-charge, or checkpoint security supervisor completes or terminates his or her training or transfers to another company, the screening company shall annotate the employee's record to that effect.

(b) The screening company shall upon request of a screener, screener-in-charge, or checkpoint security supervisor make a copy of the employee's training record available to the employee within 4 days of his or her request.

(c) A screener, screener-in-charge, or checkpoint security supervisor who has been issued a letter of completion of training may request in writing that the screening company provide to another certificated screening company or a screening company that has applied for a screening company certificate a complete copy of the employee's training and performance records. Upon receiving such a request, the screening company shall provide the records to the second company within 7 days. Any company receiving records from another company may use the screener, screener-in-charge, or checkpoint security supervisor without providing retraining if the company provides transition training as specified in its security program, unless an evaluation of the employee's training shows the results to be unsatisfactory or the employee has not performed screening functions for 1 year or more.

(d) A screening company may request from another screening company records for a screener, screener-in-charge, or checkpoint security

supervisor as described in paragraph (c) of this section when a signed consent form has been provided by the employee whose records are to be requested.

(e) Upon the termination of screening services at a site, a screening company shall surrender all original records required under this part to the carrier for which it was conducting screening under this part.

(f) Records of training, testing, and certification shall be made available promptly to FAA special agents upon request and shall be maintained for a period of at least 180 days following the termination of duty for a screener, screener-in-charge, or checkpoint security supervisor. Test records will include all tests to which the employee was subjected, not just those satisfactorily completed.

§ 111.223 Automated performance standards.

(a) Each screening company shall use a threat image projection system for each X-ray and explosives detection system that it operates as specified in its security program to measure the performance of individual screeners, screening locations, and screening companies.

(b) Each screening company shall meet the performance standards set forth in its security program.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

14. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906, 44935 note.

15. Amend § 129.25 by revising paragraph (a); by removing ''and'' at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding a semicolon in its place; by adding new paragraphs (c)(5) and (c)(6); by revising paragraphs (e)(2), (e)(3), (e)(4), and (j); and by adding new paragraphs (k), (l), (m), (n), (o), and (p) to read as follows:

§ 129.25 Airplane security.

(a) Terms defined in parts 107, 108, 109, and 111 of this chapter apply to this part. For purposes of this part, parts 107, 108, 109, and 111 of this chapter, and security programs under these parts, the following definitions also apply:

* * * * *

(c) * * *

(5) Include within it a description of how the foreign air carrier will provide oversight to each screening company performing screening on its behalf; and

(6) Include within it a description of how the foreign air carrier will evaluate and test the performance of screening.

* * * * *

(e) * * *

(2) A foreign air carrier may submit a request to the Assistant Administrator to amend its accepted security program as follows:

(i) The application shall be filed with the Assistant Administrator at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Assistant Administrator.

(ii) Within 30 days after receiving a proposed amendment, the Assistant Administrator, in writing, either approves or denies the request to amend.

(iii) An amendment to a foreign air carrier security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(iv) Within 45 days after receiving a denial, the foreign air carrier may petition the Administrator to reconsider the denial.

(v) Upon receipt of a petition for reconsideration, the Assistant Administrator either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment, or affirms the denial.

(3) If the safety and the public interest require an amendment, the Assistant Administrator may amend an accepted security program as follows:

(i) The Assistant Administrator notifies the foreign air carrier, in writing, of the proposed amendment, fixing a period of not less than 45 days within which the foreign air carrier may submit written information, views, and arguments on the amendment.

(ii) After considering all relevant material, the Administrator notifies the foreign air carrier of any amendment adopted or rescinds the notice. The foreign air carrier may petition the Administrator to reconsider the amendment, in which case the effective date of the amendment is stayed until the Administrator reconsiders the matter.

(iii) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Administrator to withdraw or amend the amendment, or by affirming the amendment.

(4) If the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment, effective without stay, on the date the foreign air carrier receives notice of it. In such a case, the Assistant Administrator shall incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The foreign air carrier may file a petition for reconsideration under paragraph (e)(2) of this section; however, this does not stay the effectiveness of the emergency amendment.

* * * * *

(j) The following apply to the screening of persons and property, and the acceptance of cargo:

(1) Each foreign air carrier required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its screening company security program(s) to inspect each person entering a sterile area, each person's accessible property, and checked baggage and cargo as specified.

(2) Each foreign air carrier required to conduct screening under a security program shall detect and prevent the carriage aboard aircraft and introduction into a sterile area of any unauthorized explosive, incendiary, or deadly or dangerous weapon on or about each person or the person's accessible property.

(3) Each foreign air carrier required to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its screening company security program(s) to prevent the carriage of any unauthorized explosive, incendiary, or deadly or dangerous weapon aboard a passenger aircraft.

(k) Except as provided in § 111.109(k) of this chapter each foreign air carrier required to conduct screening of persons and property for locations within the United States under a

security program shall either hold a screening company certificate issued under part 111 of this chapter or shall use another screening company certificated under part 111 of this chapter to inspect persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon. FAA-certified canine teams are not required to be operated by certificated screening companies.

(l) Each foreign air carrier shall ensure that each screening company performing screening on its behalf conducts such screening in accordance with part 111 of this chapter, the screening company's security program, and the screening company's operations specifications.

(m) Each foreign air carrier required to conduct screening under this part shall provide oversight to each screening company performing screening on its behalf as specified in the foreign air carrier's security program.

(n) Each foreign air carrier required to conduct screening under a security program shall:

(1) Maintain at least one complete copy of each of its screening companies' security programs at its principal business office.

(2) Have available complete copies or the pertinent portions of its screening companies' security programs or appropriate implementing instructions at each location where the screening companies conduct screening for the foreign air carrier.

(3) Make copies of its screening companies' security programs available for inspection by an FAA special agent upon request.

(4) Restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs to persons with a need to know as described in part 191 of this chapter.

(5) Refer requests for such information by other persons to the Administrator.

(o) Each foreign air carrier required by the Administrator to implement additional security measures to maintain system performance shall notify the public by posting signs at affected locations as specified in its security program.

(p) Each foreign air carrier shall monitor each screener training test required under § 111.215(a) and (c) of this chapter for all screening companies that conduct screening on its behalf in accordance with its security program. Each test monitor shall meet the following qualifications:

(1) Be a foreign air carrier employee who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor, unless otherwise authorized by the Administrator.

(2) Be familiar with the testing and grading procedures contained in the screening company's security program.

(3) Meet other qualifications set forth in the screening company's security program.

16. Amend § 129.26 by removing paragraphs (a)(3) and (a)(4); redesignating paragraph (a)(5) as new paragraph (a)(3) and revising it; and adding a new paragraph (a)(4) to read as follows:

§ 129.26 Use of X-ray system.

(a) * * *

(3) The system meets the imaging requirements set forth in the screening standard security program using the step wedge specified in American Society for Testing and Materials Standard F792–82; and

(4) It ensures that each X-ray system that it uses has a functioning threat image projection system installed on it that meets the standards set forth in its security program unless otherwise authorized by the Administrator.

(i) Automated X-ray threat image projection data will be collected as specified in the model security program and in the responsible screening company's security program.

(ii) The foreign air carrier shall make X-ray threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

* * * * *

17. Add a new § 129.28 to read as follows:

§ 129.28 Use of explosives detection systems.

(a) When the Administrator shall require by an amendment under § 129.25(e), each foreign air carrier required to conduct screening under a security program shall use an explosives detection system that has been approved by the Administrator to screen checked baggage on each international flight in accordance with its security program and its screening company security programs.

(b) Unless otherwise authorized by the Administrator, each foreign air carrier shall ensure that each explosives detection system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated explosives detection system threat image projection data will be collected as specified in the foreign air carrier's security program and in the responsible screening company's security program.

(2) The foreign air carrier shall make explosives detection system threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

PART 191—PROTECTION OF SENSITIVE SECURITY INFORMATION

18. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705–44706, 44901–44907, 44913–44914, 44932, 44935–44936, 46105.

19. Revise § 191.1(c) to read as follows:

§ 191.1 Applicability and definitions.

* * * * *

(c) The authority of the Administrator under this part also is exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security and any other individual formally designated to act in their capacity. For matters involving the release or withholding of information and records containing information described in § 191.7(a) through (g), related documents described in § 191.7(l), and § 191.7(m), the authority may be further delegated. For matters involving the release or withholding of information and records containing information described in § 191.7(h) through (k) and related documents described in § 191.7(l), the authority may not be further delegated.

20. Revise § 191.5 to read as follows:

§ 191.5 Records and information protected by others.

(a) Each airport operator, air carrier, indirect air carrier, foreign air carrier, and certificated screening company, and each person receiving information under § 191.3(b), and each individual employed by, contracted to, or acting for an airport operator, air carrier, indirect air carrier, foreign air carrier, certificated screening company, or person receiving information under § 191.3(b) shall restrict disclosure of and access to sensitive security information described in § 191.7(a) through (g), (j), (k), (m), and, as applicable, § 191.7(l) to persons with a need to know and shall refer requests by other persons for such information to the Administrator.

(b) A person has a need to know sensitive security information when the information is necessary to carry out FAA-approved or directed aviation security duties; when the person is in

training for such a position; when the information is necessary to supervise or otherwise manage the individuals carrying out such duties; to advise the airport operator, air carrier, indirect air carrier, foreign air carrier, or certificated screening company regarding the specific requirements of any FAA security-related requirements; or to represent the airport operator, air carrier, indirect air carrier, foreign air carrier, certificated screening company, or person receiving information under § 191.3(d) in connection with any judicial or administrative proceeding regarding those requirements. For some specific information, the Administrator may make a finding that only specific persons or classes of persons have a need to know.

(c) When sensitive security information is released to unauthorized persons, any air carrier, airport operator, indirect air carrier, foreign air carrier, certificated screening company, or individual with knowledge of the release shall inform the Administrator.

(d) Violation of this section is grounds for a civil penalty and other enforcement or corrective action by the FAA.

(e) Wherever this part refers to an air carrier, airport operator, indirect air carrier, foreign air carrier, or certificated screening company, those terms also include applicants for such authority.

(f) An individual who is in training for a position is considered to be employed by, contracted to, or acting for an airport operator, air carrier, indirect air carrier, foreign air carrier, certificated screening company, or person receiving information under § 191.3(b).

21. Amend § 191.7 by revising the introductory text; by revising paragraphs (a) and (h); and by adding new paragraphs (m) and (n) to read as follows:

§ 191.7 Sensitive security information.

Except as otherwise provided in writing by the Administrator, the following information and records containing such information constitute sensitive security information:

(a) Any approved or standard security program for an air carrier, foreign air carrier, indirect air carrier, airport operator, or certificated screening company and any security program that relates to U.S. mail to be transported by air (including that of the United States Postal Service and of the Department of Defense); and any comments, instructions, or implementing guidance pertaining thereto.

* * * * *

(h) Any information that the Administrator has determined may reveal a systemic vulnerability of the aviation system or a vulnerability of aviation facilities to attack. This includes but is not limited to details of inspections, investigations, and alleged violations and findings of violations of part 107, 108, 109, or 111 of this chapter or § 129.25, 129.26, or 129.27 of this chapter and any information that could lead to the disclosure of such details, as follows:

(1) For an event that occurred less than 12 months before the date of the release of the information, the following are not released: the name of an airport where a violation occurred, the regional identifier in the case number, a description of the violation, the regulation allegedly violated, and the identity of the air carrier in connection with specific locations or specific security procedures. The FAA may release summaries of an air carrier's or certificated screening company's total security violations in a specified time range without identifying specific violations. Summaries may include total enforcement actions, total proposed civil penalty amounts, total assessed civil penalty amounts, numbers of cases opened, numbers of cases referred by Civil Aviation Security to FAA counsel for legal enforcement action, and numbers of cases closed.

(2) For an event that occurred 12 months or more before the date of the release of the information, the following are not released: the specific gate or other location on an airport where the event occurred. The FAA may release the following: the number of the enforcement investigative report; the date of the alleged violation; the name of the air carrier, airport, and/or certificated screening company; the regulation allegedly violated; the proposed enforcement action; the final enforcement action; and the status (open, pending, or closed).

(3) The identity of the FAA special agent who conducted the investigation or inspection.

(4) Security information or data developed during FAA evaluations of the air carriers, airports, indirect air carriers, and certificated screening companies and the implementation of the security programs, including air carrier, airport, and indirect air carrier inspections and screening location tests or methods for evaluating such tests.

* * * * *

(m) Any approved operations specifications for a screening company except the following items, which are not sensitive security information: the name of the company, locations at which the Administrator has authorized the company to conduct business, the type of screening that the Administrator has authorized the company to perform, and the title and name of the person required by § 111.209(b) of this chapter.

(n) Any screener test used under part 111 of this chapter.

Issued in Washington, DC, on December 15, 1999.

Quinten Johnson,

Acting Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 00–16 Filed 1–4–00; 8:45 am]

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Federal Register

Wednesday
January 5, 2000

Part III

Department of Labor

Pension Welfare Benefits Administration

29 CFR Part 2550
Insurance Company General Accounts; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

RIN 1210–AA58

Insurance Company General Accounts

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation which clarifies the application of the Employee Retirement Income Security Act of 1974 as amended (ERISA or the Act) to insurance company general accounts. Pursuant to section 1460 of the Small Business Job Protection Act of 1996, section 401 of ERISA was amended. Section 401 now provides that the Department of Labor (the Department) must issue regulations to: provide guidance for the purpose of determining, where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of the insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of Part 4 of Title I of ERISA and section 4975 of the Internal Revenue Code of 1986 (the Code), and provide guidance with respect to the application of Title I to the general account assets of insurers. This regulation affects participants and beneficiaries of employee benefit plans, plan fiduciaries and insurance company general accounts.

DATES: Effective Date: This rule is effective January 5, 2000.

Applicability Dates: Except as provided below, section 2550.401c–1 is applicable on July 5, 2001. Section 2550.401c–1(c) [except for paragraph (c)(4)] and (d) are applicable on July 5, 2000. The first annual disclosure required under § 2550.401c–1(c)(4) shall be provided to each plan not later than 18 months following January 5, 2000. Section 2550.401c–1(f) is applicable on January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall or Wendy M. McColough, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, N.W., Washington, DC 20210, (202) 219–8194, or Timothy Hauser, Plan Benefits Security Division, Office of the Solicitor, (202) 219–8637. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On December 22, 1997, the Department published a notice of proposed rulemaking in the **Federal Register** (62 FR 66908) which clarified the application of ERISA to insurance company general accounts. The Department invited interested persons to submit written comments or requests that a public hearing be held on the proposed regulation. The Department received more than 37 written comments in response to the proposed regulation. A public hearing, at which 13 speakers testified, was held on June 1, 1998 in Washington, D.C.

The following discussion summarizes the proposed regulation and the major issues raised by the commentators.[1] It also explains the Department's reasons for the modifications reflected in the final regulation that is published with this notice.

Discussion of the Regulation and Comments

Pursuant to section 1460 of the Small Business Job Protection Act of 1996 (SBJPA), Public Law 104–188, the proposed regulation amended 29 CFR Part 2550 by adding a new section, 2550.401c–1. This new section was divided into ten major parts. Paragraph (a) of the proposed regulation described the scope of the regulation and the general rule. Proposed paragraphs (b) through (f) contained conditions which must be met in order for the general rule to apply. Specifically, paragraph (b) addressed the requirement that an independent fiduciary expressly authorize the acquisition or purchase of a Transition Policy. Paragraph (c) described the disclosures that an insurer must make both prior to the issuance of a Transition Policy to a plan and on an annual basis. Paragraph (d) provided for additional disclosures regarding separate account contracts. Paragraph (e) contained the procedures that must apply to the termination or discontinuance of a Transition Policy by a policyholder. Paragraph (f) contained notice provisions regarding contract terminations and withdrawals in connection with insurer-initiated amendments. Proposed paragraph (g) set forth a prudence standard for the management of general account assets by insurers. The definitions of certain terms used in the proposed regulation were contained in paragraph (h). Proposed paragraph (i) described the effect of compliance with the regulation and proposed paragraph (j) contained the effective dates of the regulation. For a more complete statement of the background and description of the proposed regulation, refer to the notice published on December 22, 1997 at 62 FR 66908.

1. Scope and General Rule

Proposed § 2550.401c–1(a) and (b) essentially followed the language of section 401(c) of ERISA. Paragraph (a) described, in cases where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of an insurance company's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of Subtitle A, and Parts 1 and 4 of Subtitle B, of Title I of the Act and section 4975 of the Internal Revenue Code, and provided guidance with respect to the application of Title I and section 4975 of the Code to the general account assets of insurers.

Paragraph (a)(2) stated the general rule that when a plan acquires a policy issued by an insurer on or before December 31, 1998 (Transition Policy), which is supported by assets of the insurer's general account, the plan's assets include the policy, but do not include any of the underlying assets of the insurer's general account if the insurer satisfies the requirements of paragraphs (b) through (f) of the regulation.

One commentator stated that paragraph (a)(2) lacked clarity and did not properly cross-reference the definition of the term ''Transition Policy.'' In response to this comment, the Department has clarified paragraph (a)(2) to provide that ''* * * when a plan acquires a Transition Policy (as defined in paragraph (h)(6)), the plan's assets include the policy, but do not include any of the underlying assets of the insurer's general account if the insurer satisfies the requirements of paragraphs (c) through (f) of this section.''

Several commentators requested that the final regulation contain a total exclusion from the definition of ''plan assets'' for all assets held in or transferred from the estate of an insurance company in delinquency proceedings in which an impaired or insolvent insurer is placed under court supervision pursuant to State insurance laws governing rehabilitation or liquidation. One commentator explained that delinquency proceedings are initiated when the insurance regulator in the State where the insurer is domiciled files a petition in State

[1] References to ''comments'' and ''commentators'' include both written comment letters as well as prepared statements and oral testimony at the public hearing.

court requesting a takeover of the insurer's operations from existing management. Such a petition is predicated on the regulator's conclusion that continued operation of the insurer by management would be hazardous to policyholders, creditors or the public. The precipitating event is usually the insolvent condition of the insurer. Upon the granting of the petition, a new legal entity called the estate is created. The court gives control over the estate to a receiver who is charged under State law with the fiduciary duty to fairly represent the interests of all policyholders, creditors and shareholders of the insolvent insurer. To stabilize the situation, the court is almost always compelled to order a moratorium or other restrictions on cash withdrawals, subject to individual hardship exceptions. All activity in the proceedings is carried out under the close supervision of the court.

In consideration of the concerns expressed by commentators, the Department has adopted a new paragraph (a)(3) which specifically provides that a plan's assets will not include any of the underlying assets of the insurer's general account if the insurer fails to satisfy the requirements of paragraphs (c) through (f) of the regulation solely because of the takeover of the insurer's operations as a result of the granting of a petition filed in delinquency proceedings by the insurance regulatory authority in the State court where the insurer is domiciled.

2. Authorization by an Independent Fiduciary

Proposed paragraph (b)(1) stated the general requirement that an independent fiduciary ''who has the authority to manage and control the assets of the plan must expressly authorize the acquisition or purchase of the Transition Policy.'' A fiduciary is not independent if the fiduciary is an affiliate of the insurer issuing the policy. Paragraph (b)(2) of the proposed regulation contained an exception to the requirement of independent plan fiduciary authorization if the insurer is the employer maintaining the plan, or a party in interest which is wholly-owned by the employer maintaining the plan, and the requirements of section 408(b)(5) of ERISA are met.[2]

The Department notes that, because section 401(c)(1)(D) of the Act and the definition of Transition Policy preclude the issuance of any additional Transition Policies after the publication of the final regulation, the requirement for independent fiduciary authorization of the acquisition or purchase of the Transition Policy no longer has any application. Accordingly, the Department generally has determined not to respond to the comments which raised issues regarding this requirement. However, the Department has determined to respond to the comments concerning the definition of ''affiliate'' contained in paragraph (h)(1) of the proposed regulation because of its potential relevance to other conditions under the final regulation.

One commentator suggested that the definition of ''affiliate'' contained in paragraph (h)(1) of the proposed regulation should be expanded to include: (1) 10% or more shareholders or equity holders of insurers and of persons controlling, controlled by, or under common control with insurers; (2) businesses in which a person described in proposed subparagraph (h)(1)(ii) is a 10% or more shareholder or equity holder; and (3) relatives of persons who are officers, directors, partners or employees of the insurer. Other commentators requested that the definition of affiliate be narrowed. A commentator noted that the proposed definition of affiliate would include all insurance agents and brokers of the insurer, even non-exclusive agents, as well as all employees of the insurer and of all entities in which an employee of the insurer is an officer, director, partner or employee. The commentator noted that the proposed definition would force the insurer to assume a difficult monitoring function with respect to its employees, agents and brokers. As a result, this commentator argued that the definition of affiliate in the proposed regulation need not be broader than the affiliate definition contained in Prohibited Transaction Class Exemption 84–14 (the QPAM Exemption).[3] Additionally, according to this commentator, it was unclear under the definition of affiliate whether a ''partner of'' an insurer is intended to mean a partner in the insurer or a partner with the insurer.

After consideration of the comments, the Department has determined that it would be appropriate to narrow the category of persons included under the affiliate definition and to clarify certain of the terms used in the definition. Accordingly, the Department has modified subparagraph (h)(1)(ii) to provide that an affiliate of an insurer includes any officer of, director of, 5 percent or more partner in, or highly compensated employee (earning 5 percent or more of the yearly wages of the insurer) of, such insurer or any person described in subparagraph (h)(1)(i) including in the case of an insurer, an insurance agent or broker (whether or not such person is a common law employee) if such agent or broker is an employee described above or if the gross income received by such agent or broker from such insurer or any person described in subparagraph (h)(1)(i) exceeds 5 percent of such agent's gross income from all sources for the year. In addition, under subparagraph (h)(1)(iii), the Department has determined to delete those corporations, partnerships, or unincorporated enterprises of which a person described in subparagraph (h)(1)(ii) is an employee or less than 5 percent partner.

3. Duty of Disclosure

Section 401(c)(3)(B) of the Act provides that the regulations prescribed by the Secretary ''shall require in connection with any policy issued by an insurer to or for the benefit of an employee benefit plan to the extent the policy is not a guaranteed benefit policy * * * (B) that the insurer describe (in such form and manner as shall be prescribed in such regulations), in annual reports and in policies issued to the policyholder after the date on which such regulations are issued in final form * * *, (i) a description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon termination of the policy, and (ii) for each report, the actual return to the plan under the policy and such other financial information as the Secretary may deem appropriate for the period covered by each such annual report.''

Proposed paragraph (c)(1) of the regulation similarly imposed a duty on the insurer to disclose specific information to plan fiduciaries prior to the issuance of a Transition Policy and at least annually for as long as the policy is outstanding. Paragraph (c)(2) required that the disclosures be clear and concise and written in a manner calculated to be understood by a plan fiduciary.

Although the Department did not mandate a specific format for the

[2] This exception for in-house plans of the insurer under section 401(c)(3) of ERISA is similar to the statutory exemption contained in section 408(b)(5) of ERISA which provides relief from the prohibitions of section 406 for purchases of life insurance, health insurance or annuities from an insurer if the plan pays no more than adequate consideration and if the insurer is the employer maintaining the plan.

[3] Class Exemption for Plan Asset Transaction Determined by Independent Qualified Professional Asset Managers (QPAMs), 49 FR 9494 (March 13, 1984) as corrected at 50 FR. 41430 (Oct. 10, 1985).

disclosures, the information should be presented in a manner which facilitates the fiduciary's understanding of the operation of the policy. The Department expected that, following disclosure of the required information and any other information requested by the fiduciary pursuant to proposed paragraph (c)(4)(xii), the plan fiduciary, with independent professional assistance, if necessary, would be able to ascertain how various values or amounts relevant to the plan's policy such as the actual return to be credited to any accumulation fund under the policy, would be determined.

Many of the commentators expressed a number of general objections to the disclosure provisions. These commentators stated that the level of disclosure required by the proposed regulation exceeded Congressional intent and the requirements of section 401(c) of ERISA. They also asserted that the disclosure provisions were too broad and vague to provide an insurer who is attempting to comply with the regulation any level of comfort. Moreover, the commentators maintained that other financial service providers are not required to provide the same level of disclosure to their investors. The commentators further asserted that compliance by insurers with the regulation would result in increased costs for plans without adding anything of value. In this regard, many of the commentators expressed the belief that the disclosure provisions, as proposed, impose unnecessary financial and administrative burdens on plans and insurance companies. The commentators suggested that the information required to be disclosed goes well beyond that which is necessary for a plan fiduciary to determine whether or not to invest in or retain a Transition Policy. One commentator stated that disclosure should be limited to matters immediately connected to the contract and the contract's ''bottom line''. Finally, several commentators asserted that the proposed disclosure provisions require an insurer to disclose proprietary information but did not specifically identify which items would require the disclosure of such information as the Department requested in the preamble to the proposed regulation.

Other commentators expressed the opposite view and generally supported the proposed disclosure provisions, stating that the provisions would allow plan fiduciaries to get the basic information necessary to analyze a general account contract for investment purposes. More specifically, one commentator offered the following concerns with respect to the level of disclosure currently provided in connection with insurance company general account contracts:

> The insurance companies issuing the general account contracts have not provided sufficient information for fiduciaries to monitor contractual compliance. The insurance companies have not provided sufficient information to allow fiduciaries to validate that all contractholders are receiving equitable treatment within the general account. The insurance companies have not provided sufficient information for fiduciaries to calculate the rate of return on general account contracts comparable to the rate of return information they obtain for other plan investments.

Similarly, several commentators indicated that currently, plan fiduciaries often have a difficult time obtaining any meaningful information to assist them in making informed decisions concerning whether to purchase or retain a Transition Policy. In this regard, commentators also noted that the disclosures set forth in the proposed regulation are even more important for small plans, which do not normally have the economic leverage to negotiate any voluntary disclosure of information by the insurer. Another commentator expressed his belief that the proposed disclosure provisions are consistent with the intent of the Congressional Conferees.

Two commentators supported the disclosures mandated by the proposed regulation but asserted that those provisions did not go far enough. These commentators suggested that a clear and comprehensive standard form for disclosures should be issued to assist plan fiduciaries as well as small insurance companies seeking to comply with the regulation. One commentator suggested that the Department create sample written disclosures or issue a guide to writing disclosures in plain English. The commentator also stated that the regulation does not provide any penalties for an insurer's failure to comply with a policyholder's request for information. In this regard, the Department notes that paragraph (i) of the final regulation contains an explanation of the consequences of an insurer's failure to comply with the provisions of the regulation.

The Department has considered the comments regarding the scope and level of detail required by the proposed disclosure provisions in light of the Congressional mandate set forth in section 401(c)(3) of ERISA. The Department continues to believe that it was given broad discretion to require that insurers provide meaningful disclosure of information regarding Transition Policies in order to enable plan fiduciaries to evaluate the suitability of such policies. The Department notes that, with respect to the annual report, section 401(c)(3)(B) of ERISA expressly directs the Department to require the disclosure of ''* * * such other financial information as the Secretary may deem appropriate for the period covered by such annual report.'' The Department believes that a plan fiduciary, at a minimum, must be provided with sufficient information about the methods used by the insurer to allocate amounts to a Transition Policy, and the actual amounts debited against, or credited to, the Transition Policy on an ongoing and on a termination basis in order to evaluate whether to invest in or to retain the Policy. In this regard, the Department notes that an insurance company general account, which necessarily operates under a complex allocation structure for fees, expenses and income, is unlike other investment vehicles. Thus, the Department believes that the information that an investor must be furnished in order to compare an investment in a general account contract to other available investment options must necessarily be more comprehensive. However, the Department recognizes that providing a plan fiduciary with the financial information needed to evaluate the suitability of a particular policy may place additional administrative costs and burdens on both insurers and plans. After careful consideration of all of the comments, the Department has concluded that modifications to the disclosure provisions are necessary in order to balance the costs of additional disclosures against the fiduciary's need for sufficient information to make informed investment decisions. Accordingly, the Department has determined, as discussed further below, to modify paragraph (c) of the disclosure provisions in the final regulation to more precisely define the scope of the information which must be furnished to the policyholder. In recognition of the variety of insurance arrangements available to plans, the Department has not been persuaded that it is necessary or feasible for plan fiduciaries to receive the information required to be disclosed to them pursuant to the regulation in a standard format. Therefore, the Department has not adopted the commentator's suggestion regarding developing a standard format or a guide for writing such disclosures. In addition, the Department has made minor modifications to the final

regulation to reflect the fact that the initial disclosures cannot be provided by an insurer prior to issuing a Transition Policy because no new Transition Policies can be issued after December 31, 1998.

Proposed paragraph (c)(3) set forth the content requirement for the information which must be provided to the plan either as part of the Transition Policy, or as a separate written document which accompanies the Transition Policy. For Transition Policies issued before the date which is 90 days after the date of publication of the final regulation, the proposed regulation required the insurer to provide the information identified in paragraph (c)(3)(i) through (iv) no later than 90 days after publication of the final regulation. For Transition Policies issued 90 days after the date of publication of the final regulation, the proposed regulation required the insurer to provide the information to a plan before the plan makes a binding commitment to acquire the policy.

Under paragraph (c)(3), an insurer must provide a description of the method by which any income and expenses of the insurer's general account are allocated to the policy during the term of the policy and upon its termination. The initial disclosure under this paragraph must include, among other things, a statement of the method used to determine ongoing fees and expenses that may be assessed against the policy or deducted from any accumulation fund under the policy. The term ''accumulation fund'' is defined in paragraph (h)(5) as the aggregate net considerations (*i.e.,* gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to the contract, less partial withdrawals and benefit payments and less charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.

Under the proposed regulation, the insurer must also include, in its description of the method used to allocate income and expenses to the Transition Policy: an explanation of the method used to determine the return to be credited to any accumulation fund under the policy; a description of the policyholder's rights to transfer or withdraw all or a portion of any fund under the policy, or to apply such amounts to the purchase of benefits; and a statement of the precise method used to calculate the charges, fees or market value adjustments that may be imposed in connection with the policyholder's right to withdraw or transfer amounts under any accumulation fund. Upon request, the insurer must provide the information necessary to independently calculate the exact dollar amounts of the charges, fees or market value adjustments.

A number of commentators objected to the provisions contained in subparagraphs (c)(2), (c)(3)(i)(D) and (c)(4) of the proposed regulation which, in their view, would require insurers to disclose or make available upon request by a plan fiduciary, information relating to the pricing of their products, internal cost calculations and/or methodologies sufficient to enable the fiduciary to independently calculate the insurer's adjustments. The commentators stated their belief that such information is proprietary. In this regard, the commentators argued that disclosure of very detailed pricing information would place insurance companies at a severe competitive disadvantage vis-a-vis other financial institutions that market products or services to employee benefit plans. Moreover, they stated that, while disclosure of fees and returns is common and appropriate, disclosure of the underpinnings of such fees and returns is neither common nor necessary. The commentators further asserted that plan fiduciaries do not need such information to make prudent investment decisions.

Two commentators requested that the Department eliminate the last two sentences of paragraph (c)(2) of the proposed regulation and all of paragraph (c)(3)(i)(D) other than the following: ''A statement of the method used to calculate any charges, fees, credits or market value adjustments described in paragraph (i)(C) of this section.'' According to the commentators, these modifications would eliminate the requirement that an insurer provide all of the data necessary to enable a plan fiduciary to replicate the insurer's internal adjustments.

One commentator suggested that, because the method used to determine a market value adjustment involves several layers of internal general account calculations, the Department should provide more clarity with respect to how far back an insurer should ''unpeel'' the market value adjustment calculation to satisfy the disclosure requirements in subparagraph (c)(3)(i)(D). The commentator further urged the Department to eliminate the requirements in paragraphs (c)(2) and (c)(3)(i)(D) that the insurer disclose any data necessary to permit the fiduciary, with or without professional assistance, to independently calculate the exact dollar amount of the charges, fees or adjustments. The commentator offered the following language in lieu of the deleted text in subparagraph (c)(3)(i)(D):

> Upon request of the plan fiduciary, the insurer must provide as of a stated date: (1) The formula actually used to calculate the market value adjustment, if any, to be applied to the unallocated amount in the accumulation fund upon distribution to the policyholder; and (2) the actual calculation of the applicable market value adjustment, including a reasonably detailed description of the specific variables used in the calculation.

One commentator suggested that the final regulation establish a 30 day time limit for responding to a fiduciary's request for information from an insurer pursuant to subsection (c)(3)(i)(D). Other commentators expressed general support for the disclosure provisions but maintained that the Department should require that additional items of information be disclosed to policyholders. Specifically, one commentator requested that the initial disclosure provisions be expanded to require that insurers disclose the following additional information upon the request of a policyholder: Copies of reports relating to the financial condition of the insurer pursuant to subparagraphs (c)(3)(i)(A) and (B); amounts which have been offset, subtracted or deducted from the gross earnings of the general account before income is credited to a Transition Policy pursuant to subparagraph (c)(3)(i)(B); gross and net return and income prior to returns being credited to the Transition Policy; and, pursuant to subparagraph (3)(c)(i)(C), any alternative withdrawal options which might scale-back charges, fees or adjustments in exchange for a longer withdrawal term. Finally, the commentator suggested that a condition should be imposed which would require insurers to disclose the treatment of capital gains and losses, any establishment of reserves or contingency funds, or smoothing or stabilization funds, as well as areas in which management of the insurer has discretion in creating or modifying the above.

Another commentator stated that, in order to maintain transparency of all material features and aspects of general account contracts, the following requirements should be added to the regulation: disclosure of the assets supporting specific general account contracts; disclosure of data that permits comparison of a plan's contract to other contracts within the same class; and comparison of the class of contracts to all classes of contracts participating in the general account. The specific data

would include: gross and net returns, and the methodology and data to verify such returns; investment income generated by the general account; allocation of contract assets within the general account; and allocation procedures, risk and reserve charges, and other expenses attributable to all classes of contracts, as well as quarterly disclosure of gross and net rates of return.

As previously noted, the Department believes that it is important for plan fiduciaries to be provided with the information necessary to adequately assess the financial strength of an insurer, the suitability of a particular policy for the plan, as well as the appropriateness of continuing a plan's investment in a such policy. Nonetheless, the Department agrees with the commentators' views that a plan fiduciary need not replicate all of an insurer's internal cost calculations in order to make these assessments. However, the Department continues to believe that information necessary to calculate the exact dollar amount of the charges, fees or adjustments upon contract terminations must be disclosed to plan fiduciaries. In order for the termination provisions in the regulation to be meaningful, plan fiduciaries must have access to the information necessary to calculate and monitor the charges which would be assessed against a Transition Policy in the event of termination. Therefore, the Department has determined not to make all of the deletions to subparagraphs (c)(2) and (c)(3) requested by the commentators. However, the Department has determined that it would be appropriate to modify paragraph (c) to narrow the scope of the disclosures which must be provided in order to enable a plan fiduciary to determine the charges or adjustments applicable to the plan's policy. Pursuant to these modifications, the last two sentences of subparagraph (c)(2) have been deleted and subparagraphs (c)(3)(i)(A)–(C) have been modified to delete the requirement regarding disclosure of the data necessary for application of the methods or methodologies for determining the various values or amounts relevant to the plan's policy. The Department has retained the requirement in subparagraph (c)(3)(i)(D) that the insurer provide, upon request of a policyholder, data relating to any charges, fees, credits or market value adjustments relevant to the policyholder's ability to withdraw or transfer all or a portion of any fund under the policy. However, this requirement has been restated to clarify the level of ''unpeeling'' which must be provided by the insurer and to require that such information must be provided to the policyholder within 30 days of the request for disclosure. Accordingly, upon the request of a plan fiduciary, the insurer must provide the formula actually used to calculate the market value adjustment, if any, applicable to the unallocated amount in the accumulation fund upon distribution of a lump sum payment to the policyholder, the actual calculation as of a specified date of the applicable market value adjustment, including a description of the specific variables used in the calculation, the value of each of the variables, and a general description of how the value of each of the variables was determined.

In response to the commentators who suggested that the Department expand the disclosure requirements in the regulation, the Department agrees with their assertions that there are a number of additional items of financial information regarding an insurance company general account, which may be relevant to a plan's fiduciary's consideration of the appropriateness or the prudence of a Transition Policy. In this regard, the Department notes that the disclosure requirements in the regulation reflect what the Department believes is the minimum level of information that an insurer must provide to a fiduciary of a plan which has invested in a Transition Policy. If the fiduciary believes that there are additional items of information which must be reviewed to evaluate a Transition Policy, the Department encourages the fiduciary to request, or to negotiate for, where appropriate, such information from the insurer.

Proposed paragraph (c)(4) described the information which must be provided at least annually to each plan to which a Transition Policy has been issued. The proposal required the insurer to provide the following information at least annually to each plan regarding the applicable reporting period: the balance in the accumulation fund on the first and last day of the period; any deposits made to the accumulation fund; all income attributed to the policy or added to the accumulation fund; the actual rate of return credited to the accumulation fund; any other additions to the accumulation fund; a statement of all fees, charges or expenses assessed against the policy or deducted from the accumulation fund; and the dates on which the additions or subtractions were credited to, or deleted from, the accumulation fund.

In addition, the proposed regulation required insurers to annually disclose all transactions with affiliates which exceed 1 percent of group annuity reserves of the general account for the reporting year. The annual disclosure also had to include a description of any guarantees under the policy and the amount that would be payable in a lump sum pursuant to the request of a policyholder for payment of amounts in the accumulation fund under the policy after deduction of any charges and any deductions or additions resulting from market value adjustments.

As part of the annual disclosure, the proposed regulation requires that an insurer inform policyholders that it will make available upon request certain publicly-available financial information relating to the financial condition of the insurer. Such information would include rating agency reports on the insurer's financial strength, the risk adjusted capital ratio, an actuarial opinion certifying to the adequacy of the insurer's reserves, and the insurer's most recent SEC Form 10K and Form 10Q (if a stock company).

Several commentators objected to the annual disclosure provisions in subparagraph (c)(4)(xii) of the proposed regulation which required an insurer to make available on request of a plan, copies of certain publically available financial data or reports relating to the financial condition of the insurer, including the insurer's risk adjusted capital ratio, and the actuarial opinion with supporting documents certifying the adequacy of the insurer's reserves. The commentators asserted that the risk-based capital report and actuarial opinions should not be disclosed because the information contained therein could be misleading to plan fiduciaries. With respect to the risk-based capital reports, the commentators explained that these documents are designed as a regulatory tool and are not intended as a means to rank insurers. They noted that the NAIC Risk-Based Capital for Insurers Model Act specifically prohibits publication of such reports and recognizes that such information is confidential.[4] The commentators further noted that the supporting memoranda to the actuarial opinions are not publically available and that the memoranda contain proprietary information such as interest margins and expense and pricing assumptions. With respect to the

[4] The Department notes that subparagraph (c)(4)(xii)(C) of the proposed regulation required annual disclosure of the risk based capital ratio and a brief description of its derivation and significance, rather than disclosure of the risk based capital report as suggested by the commentators. It is the Department's further understanding that the risk based capital ratio is currently publicly available to policyholders. .

actuarial opinion, one commentator stated that pension plan administrators do not have the expertise and may not be sufficiently knowledgeable about insurance to understand the limitations of this opinion. This commentator also expressed concern regarding the Department's characterization of the actuarial opinion as a certification of the insurer's reserves, noting that ''no one can offer absolute assurance of the continued solvency of an insurance company.'' Lastly, the commentator was concerned that the provision of the actuarial opinion could subject the appointed actuary to unanticipated liability and costs as a plan fiduciary.[5] Another commentator suggested that to the extent that information regarding the financial condition of the insurer is publicly available, the insurer should be required to inform policyholders where such information may be found on the Internet.

The Department notes that there is nothing in the regulation that would preclude an insurer from providing a statement, accompanying the reports or data made available to a plan upon request, which contains a clear and concise explanation of the disclosures, including an objective recitation as to why such information may be misleading to policyholders. Accordingly, the Department has determined not to delete these disclosure requirements. However, in response to the concerns raised by the commentators, the Department has revised subparagraph (c)(4)(xii)(D) under the final regulation to delete the requirement that the supporting documentation be provided in connection with disclosure of the actuarial opinion.

One commentator noted that the information regarding expense, income and benefit guarantees under the policy, which is required to be disclosed annually pursuant to subparagraph (c)(4)(x) of the proposed regulation, is contained in the contract. The commentator opined that, since contractholders already have this information, requiring insurers to reproduce it on an annual basis is unnecessary. As a result, the commentator urged the Department to delete this disclosure from the final regulation. The Department finds merit in this comment and has modified subparagraph (c)(4)(x) to require annual disclosure of the expense, income and benefit guarantees under the policy only if such information is not provided in the policyholder's contract, or is different from the information on guarantees previously disclosed in the contract.

Two commentators expressed concern regarding the requirement in subparagraph (c)(4)(iv) that the actual rate of return credited to the accumulation fund under the policy be disclosed on an annual basis in connection with Transition Policies that are issued to individuals. According to the commentators, it will be difficult to determine the actual plan level rate of return in cases where interest is calculated at the participant level. Consequently, the commentators sought clarification that, in the case of individual policies issued by an insurer to plan participants, the requirement of subparagraph (c)(4)(iv) will be deemed satisfied by annual disclosure of the rate of return under the policy to the individual policyholder. The Department is of the view that subsection (c)(4)(iv) will be satisfied where an insurer which issues individual policies to plan participants makes an annual disclosure of the rate of return to the individual policyholders.

With respect to the required annual disclosure of termination values in subparagraph (c)(4)(xi) of the proposed regulation, two commentators asserted that determining termination values is a manual time-consuming customized procedure which cannot be automated without significant difficulty and associated cost. One commentator noted that its pension division policyholders receive an annual statement which gives them, among other things, their account value, without charges being applied, and a ''surrender'' value, which is their account value less all applicable charges except the market value adjustment. The commentator maintains that it is impossible, if not almost impossible, to have a firm withdrawal amount reported to all pension division policyholders on an annual basis. The commentator recommended that subparagraph (c)(4)(xi) be modified to permit insurers to comply with this requirement by approximating the amount that would be payable in a lump sum at the end of such period.

On the basis of these comments, the Department has determined to modify subparagraph (c)(4)(xi) of the final regulation to make clear that the insurer generally may comply with its annual disclosure obligations by disclosing to the plan the approximate amount that would be payable to the plan in a lump sum at the end of such period. In this regard, the Department expects that any approximation of the lump sum payment would be determined in good faith as a result of a rational decision-making process undertaken by the insurer. As modified, subparagraph (c)(4)(xi) additionally provides, however, that the policyholder may request that the insurer provide the more exact calculation of termination values specified in subparagraph (c)(3)(i)(D) as of a specified date that is no earlier than the last contract anniversary preceding the date of the request.

One commentator stated that the disclosure of affiliate transactions is not relevant or useful to plan policyholders in evaluating the merits of a contract or the performance of an insurer. Moreover, the commentator argued that affiliate transactions are monitored and regulated by State insurance authorities which require, among other things, that any such transaction be effected on arm's-length terms. Accordingly, the commentator requested that the Department delete subparagraph (c)(4)(ix) and replace that requirement with a statement in subparagraph (c)(3) to the effect that an insurer may engage in transactions with corporations or partnerships (including joint ventures), controlling, controlled by, or under common control with, the insurer along with a general description of the basis on which such transaction will be effected. Another commentator stated that the disclosure of related party transactions is necessary to evaluate the potential impact of such transactions on the general account contract and the potential impact the transaction may have in affecting a contract's returns. The commentator would add the following to subparagraph (c)(4)(ix):

> Whether the 1% threshold for reporting related party transactions has been met should be based on whether the aggregate of related party transactions exceeds this threshold, since there may be many cases when this threshold far exceeds any individual transaction amounts. If the threshold is met, all related party transactions should then be reported.

In addition, the commentator suggests that the focus of the disclosure requirement in subparagraph (c)(4)(ix)

[5] In this regard, the Department notes that ERISA establishes a functional approach to determine whether an activity is fiduciary in nature. Under section 3(21) of ERISA, a fiduciary includes anyone who exercises discretion in the administration of an employee benefit plan; has authority or control over the plan's assets; or renders investment advice for a fee with respect to any plan assets. The Department has indicated that it examines the types of functions performed, or transactions undertaken, on behalf of the plan to determine whether such activities are fiduciary in nature and therefore subject to ERISA's fiduciary responsibility provisions. See 29 CFR 2509.75–8, D–2. To the extent that an actuary performs none of the functions discussed under section 3(21) or the applicable regulations, the actuary's activities would not be subject to ERISA's fiduciary responsibility provisions.

should only be with respect to the reserves attributable to the assets that have been compartmentalized (segmented) within the general account to support the specific contract. In response to the comments, the Department continues to believe that disclosure of large affiliate transactions is relevant to a plan fiduciary's determination regarding the appropriateness of continuing a plan's investment in a Transition Policy. Accordingly, the Department has determined to retain this requirement in the final regulation.

Several of the commentators believe that there is a need to further enhance the information required to be disclosed annually. One commentator suggested that the annual disclosure provisions be amended to require the following: pursuant to subparagraph (c)(4)(iii)—the disclosure of all gross investment results, including interest income and realized capital charges generated by the assets in the group annuity segment, and all of the offsets, deductions, charges, fees, reductions due to smoothing techniques, etc. that are taken off before a rate of return is credited to the policyholder or the accumulation fund. In addition, the commentators stated that plan fiduciaries need access to relevant general account portfolio statistics in order to assess risk and evaluate investment income in relation to risk. The commentators further stated that pension fiduciaries need to evaluate factors such as the vulnerability of the portfolio to manipulation such as churning. They concluded that the general information that should be made available with respect to a general account portfolio should include types of exposure for given asset classes, performance characteristics such as delinquencies and write-downs; the proportion of loans that are public, those that are direct placements and those in default. In addition, the commentators also urged disclosure of other types of information relative to risk assessment such as pending material litigation, adverse regulatory rulings and material corporate reorganizations.

The Department believes that the annual disclosure provisions reflect a balance between the plans' need for information about general account contracts against the costs associated with providing such information. Accordingly, after consideration of the comments, the Department has determined that it would not be appropriate to mandate the disclosure of additional information. However, this determination does not preclude a plan fiduciary from requesting, or negotiating for, where appropriate, any additional information from an insurer which the fiduciary believes is necessary to properly evaluate a Transition Policy.

Two commentators stated that there should be quarterly reporting in the following situations: significant write-downs, delinquencies, adverse events with respect to reinsurance, and the possibility of demutualization. Although the Department has determined not to require more frequent reporting, the Department notes that an insurer's unwillingness to provide more frequent disclosures with respect to material events that may impact on the insurer is a factor that should be considered by the fiduciary in its evaluation of the continued appropriateness of the Transition Policy.

4. Alternative Separate Account Arrangements

Proposed paragraph (d)(1) contained an additional disclosure requirement regarding the availability of separate account contracts. Under this paragraph, the insurer must explain the extent to which alternative contract arrangements supported by assets of separate accounts of the insurer are available to plans; whether there is a right under the policy to transfer funds to a separate account; and the terms governing any such right. An insurer also must disclose the extent to which general account contracts and separate account contracts pose differing risks to the plan. Proposed paragraph (d)(2) contained a standardized statement describing the relative risks of separate accounts and general account contracts which, if provided to policyholders, will be deemed to comply with paragraph (d)(1)(iii) of the regulation.

A commentator questioned whether the Department intended to require that the disclosure to policyholders concerning alternative separate account arrangements be provided both with the initial and annual disclosures, or only with the initial disclosure. The Department has clarified paragraph (d)(1) to require that the insurer provide the plan fiduciary with information about alternative separate account arrangements at the same time as the initial disclosure under subparagraph (c)(3).

Another commentator suggested that the Department insert the following phrase within the parenthetical contained in the second sentence in subparagraph c. of the separate account disclosure statement ''and except any surplus in a separate account.'' The commentator noted that, to the extent that insurance companies place some of their funds in these separate accounts to provide for contingencies, this separate account ''surplus'' should not be subject to the fiduciary responsibility rules.[6] Although the Department agrees with the commentator that the separate account surplus would not constitute plan assets with respect to other plan investors in the separate account, the Department is unable to conclude that such surplus would not constitute plan assets under all circumstances. Section 401(b)(2)(B) provides, in part, that the term ''guaranteed benefit policy'' includes any surplus in a separate account, but excludes any other portion of the separate account. In light of the holding in the Harris Trust decision, the Department is unable to conclude that the surplus in an insurance company separate account would never constitute plan assets with respect to plan policyholders who have purchased general account contracts. Therefore, the Department has determined not to make the requested modification.

One commentator suggested that the Department delete subparagraph d. from the separate account disclosure statement based upon the view that State regulation of insurance company accounts is irrelevant to protections under the Act, and may lull plan fiduciaries into believing that they have protections for their investment decisions when they do not. In response to this comment, the Department clarified subparagraph (d)(2)d. of the separate account disclosure statement to provide that State insurance regulation of general accounts may not offer the same level of protection to plan policyholders as ERISA regulation.

5. Termination Procedures

Paragraph (e)(1) of the proposed regulation provided that a policyholder must be able to terminate or discontinue a policy upon 90 days notice to an insurer. Under the proposal, the policyholder must have the option to select one of two payout alternatives, both of which must be made available by the insurer.

Under the first alternative, an insurer must permit the policyholder to receive, without penalty, a lump sum payment representing all unallocated amounts in the accumulation fund after deduction of unrecovered expenses and adjustment of the book value of the policy to its market value equivalency. The Department noted that, for purposes

[6] The Department notes that language identical to the commentator's appears in the Report of the ERISA Conference Committee at pages 296 and 297. H.R. Conf. Rep. No. 1280, 93rd Cong., 2d Sess. 296 (1974).

of paragraph (e), the term penalty did not include a market value adjustment (as defined in proposed paragraph (h)(7)) or the recovery of costs actually incurred, including unliquidated acquisition expenses, to the extent not previously recovered by the insurer.

Under the second alternative contained in proposed paragraph (e)(2), an insurer must permit the policyholder to receive a book value payment of all unallocated amounts in the accumulation fund under the policy in approximately equal annual installments, over a period of no longer than five years, with interest.

General Comments

Several commentators objected to the lump sum and five year book value payment requirements in the proposed regulation. The commentators' objections were based on their assertions that most insurers do not provide the termination rights set forth in the proposed regulation in their existing contracts. Many of the commentators stated that the Department should not impose retroactive amendment of in-force contracts.[7] The commentators assert that the following problems would result from inclusion of the proposed termination provisions in existing contracts: requiring insurers to amend their contracts to include the new termination provisions would subject insurers to increased risk of disintermediation and anti-selection that was not evaluated either when the contract was priced or when the types and durations of general account investments made to support the policies were determined; insurers would have to reduce the duration of the general account investment portfolios which support Transition Policies in order to mitigate the increased risks of disintermediation and anti-selection; the consequences of this change in duration would be reduced earnings for the general account, lower yields being realized by Transition Policies, and a limitation on the insurer's ability to participate in the private placement market.

Other commentators stated that the three standard termination options (lump sum payout, five year book out and ten year book out) in New York's Regulation 139 (11 NYCRR 40) afford ample protection to plans and their participants, without locking plans into disadvantageous relationships. One of the commentators noted that Regulation No. 139 permits additional flexibility in negotiating contract terms by permitting the ''Superintendent'' to waive or modify applicable requirements through the approval process. The commentator further stated that the lack of flexibility in the proposed regulation would impair the insurance industry's ability to satisfy plan sponsors' long-term investment goals and it would also force the costly realignment (or transfer) of general account assets and pass the realignment (or transfer) expenses and the losses on the sale of assets to general account policyholders. One commentator asserted that: (1) No State other than New York has set minimum termination standards applicable to group annuity contracts; (2) the proposed regulation is considerably more restrictive than New York's regulations, and (3) the New York regulation applies only to contracts issued after the regulation was adopted.

One commentator stated that if the proposed termination rules are retained, the Department should revise the proposed regulation to allow an insurer the discretion to use an installment payout option that financially approximates the lump sum market value adjusted payout, in whatever combination of interest rate reduction and payout period that State insurance laws may permit. According to one commentator, permitting policyholders to terminate at any time, and to choose from the more favorable of a book value installment option or market value option, would create opportunities for some policyholders to ''game'' the system by timing terminations to take advantage of differing interest rate environments.

The Department stated in the preamble to the proposed regulation that the proposed termination provisions were designed to protect the interests and rights of plans by ensuring that they were not locked into relationships which had become economically disadvantageous. The Department noted in footnote 5 of the proposed regulation that the termination provisions in the proposal were similar to the Department's rule governing contracts between plans and service providers under 29 CFR section 2550.408b–2(c). Several commentators objected to this reference and enumerated the differences between group annuity contracts and service provider contracts. In this regard, the Department wishes to note that the reference to the two types of contracts was intended to indicate that the underlying rationale for the rule and the proposed termination provisions was similar, not that insurance contracts and service contracts are alike in all respects. Thus, the footnote was intended to express the Department's belief that plans should not be locked into economically disadvantageous relationships under either type of contract.

A number of other commentators believe that the termination procedures in the proposed regulation should not be diminished in any respect in the final regulation. One commentator supported the Department's premise that the termination procedures are necessary to ensure that plans are not locked into economically disadvantageous relationships. The commentator stated that the inability to withdraw from a contract would be a result that would defeat the progress that would have been made by requiring insurers to provide additional disclosure. The commentator further stated that without such protections, plans may be subject to such large and arbitrary penalties at termination that the fiduciaries would be obligated to continue disadvantageous and poorly-performing contracts to the detriment of plan participants and beneficiaries. The commentator believed that the termination provisions would not materially change how most insurers invest contract assets because over time, market conditions and forces, as well as competitive factors, rather than termination procedures, would determine how assets are invested.

Another commentator stated that the terms set forth in the proposed rule are all absolutely essential for the protection of plan and participant interests. The commentator further stated that, if insurers are left with the discretion to impose either an installment or lump sum option, in the commentator's experience the insurer would act out of self-interest, not the interest of plan participants, in selecting the option.

One commentator stated that the regulation's disclosure provisions will

[7] The Department recognizes that this regulation may give rights to plan policyholders which their contracts did not independently contain. The regulation, however, also benefits insurers by enabling them to limit exposure to the full panoply of fiduciary obligations and liabilities normally associated with the management of plan assets. If an insurer complies with the regulation, it avoids substantial potential liabilities to plan policyholders. In exchange, however, the regulation requires the insurer to give the plan the disclosures necessary to evaluate the contract's performance and the right to withdraw the plan's funds when that performance proves inadequate. The Department's insistence on these disclosure and termination rights is consistent with the requirement in section 401(c)(2)(B) that the regulation ''protect the interests and rights of the plan and of its participants and beneficiaries * * *'' The Department cannot, consistent with the statute, give an insurer a safe-harbor from ERISA's fiduciary responsibility provisions without also granting additional rights to plan policyholders.

be rendered nugatory without specified termination procedures. The commentator supported the regulation's attempts to balance the economic interests of employee benefit plans with the day-to-day operations of insurance company general accounts and stated that it is imperative to ensure that the regulation specifies an appropriate time frame and method for an insurer's payment to a plan upon the plan's termination of a contract. The commentator believed that without these procedures, insurers may hold plan assets longer than necessary, thus preventing participants and beneficiaries from gaining higher rates of return on their retirement monies.

Pursuant to the SBJPA, Congress required the Department to promulgate regulations to implement the new amendment to section 401 of ERISA that would ensure the protection of the interests and rights of the plans and of its participants and beneficiaries. While the Department intended that the disclosure provisions in paragraphs (c) and (d) of this regulation would ensure that plan fiduciaries have sufficient information upon which to make appropriate decisions regarding a plan's investment in a Transition Policy, the Department continues to believe that those provisions would be rendered meaningless if plans were not offered the right to terminate their Transition Policies under terms which are both objective and fair for all parties. Therefore, the Department has determined to retain the termination provisions in paragraph (e) of the regulation with certain modifications, as discussed further below.

Lump Sum Payment

Several commentators objected to proposed paragraph (e)(1) and the definition of the term ''market value adjustment'' as a method which permits both upward and downward adjustments to the book value of the accumulation fund. According to one commentator, a two-way market value adjustment requirement may provide an artificial incentive for contractholders to terminate their contracts. The commentators further asserted that if a disproportionate number of contractholders elect to terminate and withdraw their funds in a lump sum at any one time, the resulting disintermediation may impair the insurer's solvency.

The commentator further argued that paying the contractholder the book value of the accumulation fund upon contract termination, when market value exceeds book value , is fair because the contractholder receives all guaranteed amounts, without reduction.

One commentator asserted that a large number of group annuity contracts provide only for negative adjustments and that the particular market value adjustment terms contained in any group annuity contract were put in place at the inception of the policy. The commentator was concerned that the proposed regulation would retroactively graft positive market value adjustment terms upon policies in a way that would be inconsistent with reasonable insurer expectations. This commentator also observed that no State law requires insurers to offer positive market value adjustments.

Other commentators stated that many insurers do not provide for positive market value adjustments because experience-rated group annuity contracts are intended to be long-term funding instruments supported by long-term investments. These commentators asserted that encouraging withdrawals from these contracts for arbitrage purposes by providing for positive market value adjustments disrupts the insurer's ability to make and implement investment decisions on the basis of accurate predictions of cash flow and interferes with asset-liability matching to the detriment of non-withdrawing contractholders.

Based on the Department's understanding that the purpose of a market value adjustment is to protect the policyholders who remain invested in the insurer's general account, the Department defined the term ''market value adjustment'' under the proposed regulation to reflect the economic effect (positive and negative) on a Transition Policy of an early termination or withdrawal in the current market. Thus, depending upon the economic environment at the time of termination, the terminating policyholder would either bear the costs or receive the benefit of the adjustment. The Department is not persuaded by the commentators' objections to the condition in subsection (e)(1) of the proposed regulation which requires an upward as well as a downward adjustment of the book value of the Transition Policy. Since an insurer cannot predict the direction of the economic markets or the timing of a notice to terminate, the Department is not convinced that insurers price their contracts based on an assumption that a predictable proportion of contracts will terminate when a positive market value adjustment would otherwise apply. Although the commentators argue that policyholders will terminate their Transition Policies in order to take advantage of an economic market in which they would receive a positive adjustment, the Department notes that those same policyholders would have to take into account the fact that the same market that produced the favorable adjustment would produce lower returns on reinvestment of the Transition Policy's proceeds. As a result, a positive market value adjustment would not create an artificial incentive for policyholders to terminate Transition Policies. The denial of appropriate positive market value adjustments would, however, artificially penalize plans for the termination of Transition Policies by requiring them to accept less than fair market value for the funds associated with their policies. Such a result would be inconsistent with the regulation's goal of ensuring that plan policyholders are not locked into economically disadvantageous relationships. Because the Department has not been persuaded that application of an upward market value adjustment on termination of a Transition Policy would produce inequitable results or cause significantly larger numbers of policyholders to terminate those Transition Policies, as claimed by the commentators, subsection (e)(1) has not been modified as requested.

One commentator asserted that the lump sum alternative in subparagraph (e)(1) creates serious problems for certain insurers that avoid registration of their annuity products with the Securities Exchange Commission under section 3(a)(8) of the Securities Act of 1933. Section (3)(a)(8) excludes an annuity contract or optional annuity contract from the application of federal securities laws. Rule 151 under the Securities Act of 1933 provides a ''safe harbor'' for certain forms of annuity contracts issued by insurance companies. An annuity contract which meets all of the conditions in the Rule comes within the ''safe harbor'' and is deemed to be an annuity contract within the meaning of section (3)(a)(8).[8] As a result, the commentator requested that the Department eliminate the termination provisions in the final regulation.

Another commentator stated that the proposed lump sum termination feature is contrary to Ohio's standard nonforfeiture law which provides that

[8] The safe harbor in Rule 151 is not available for a contract which permits a lump sum payment subject to a market value adjustment. However, the Rule provides that the presence of a market value adjustment should not create the negative inference that no such contract is eligible for the exclusion under section 3(a)(8). See Definition of Annuity Contract or Optional Annuity Contract, Securities Act Release No. 33–6645 (May 29, 1986).

the insurer shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand. See O.R.C. section 3915.073(C)(2). This provision applies to individual deferred annuity contracts. The commentator believes that amendment of the Transition Policies to include the lump sum termination provision will invalidate the policy under this provision of Ohio law. Similarly, one commentator determined that several States do not allow market value adjustments in individual annuity contracts that are subject to State nonforfeiture laws. Other States do not allow market value adjustments in individual annuity contracts except with respect to ''modified guaranteed annuities'' (MGAs). The commentator believes that none of the Transition Policies that would be subject to the regulation are MGAs and that, therefore, ERISA plan individual annuity contracts that would be subject to the regulation are not permitted, under State law, to impose a market value adjustment upon termination. The commentator believes that this information and the above comment concerning insurers that rely on section 3(a)(8) and Rule 151 of the Securities Act of 1933, present a strong case for only allowing a book value payout over time as one of the permitted termination options to be determined at the insurer's discretion under the regulation and not as a required option.

The Department continues to believe that the disclosure provisions set forth in subparagraph (c) of this regulation will only be meaningful if an independent plan fiduciary with respect to a Transition Policy has the ability to act upon such information by terminating the Transition Policy and receiving a payout within a reasonably short time-frame. Moreover, the Department has not been convinced that changing the lump sum payment option in the manner requested by the commentators would be in the best interests of the affected plans. Therefore, the Department has determined that it would not be appropriate to eliminate or modify the lump sum payment option as suggested by the commentators.

A commentator requested that the Department modify that portion of proposed paragraph (e)(1) that deals with contingent sales charges so that the phrase ''the term penalty does not include * * * the recovery of costs actually incurred'' is changed to ''the term penalty does not include * * * charges that are reasonably intended to recover costs.'' In addition, another commentator requested that the definition of ''without penalty'' be revised so that it is similar to the definition already contained in the regulations under section 408(b)(2) of the Act which allows the recovery of ''reasonably foreseeable expenses'' upon early termination. The Department believes that the modifications suggested by the commentators would diminish the clarity of the proposed regulation. Subparagraph (e)(1) of the proposed regulation provides an insurer with an objective standard regarding the allowable costs which may be recovered in connection with termination of a Transition Policy under which the policyholder has chosen the lump sum payout option.

Therefore, the Department has declined to modify the final regulation as requested by the commentators.

One commentator requested that the language explaining what would not constitute a ''penalty'' for purposes of paragraph (e), be modified to refer to subparagraph (e)(1) rather than paragraph (e), to clarify that market value adjustments can be imposed only on lump sum payments. The commentator suggested that the cross reference language state, ''* * * For purposes of this subparagraph (e)(1) * * *.'' The Department acknowledges that this was the intended meaning of the language of proposed paragraph (e)(1) and has modified the final regulation accordingly.

Book Value Installment Option

Several commentators asserted that, if contractholders are able to withdraw funds over a period of five years at book value at any point in time when the investment return on such funds was below current market rates, they will be able to obtain amounts in excess of the present value of their investment. According to the commentators, when interest rates are rising, contractholders would inevitably select against insurers and remaining contractholders by making book value withdrawals and reinvesting withdrawn funds at current market rates. The commentators believe that such massive withdrawals would require insurers to liquidate their assets at substantial losses, thus, seriously impairing some insurers' financial capability to meet their contractual obligations.

A number of commentators noted that the terms and conditions of a book value installment payout are intended to serve the same purposes as market value adjustments, *i.e.* the equitable allocation of the effect of a withdrawal between the withdrawing and remaining contractholders, and the protection of the general account from severe anti-selection risks. The commentators represented that the terms of book value payouts are structured to produce an actuarially equivalent value to that produced by a lump sum market value adjusted payout. However, the commentators asserted that the proposed regulation's payout period of no more than 5 years, coupled with no more than a 1% interest rate reduction will deprive insurers of the opportunity to achieve the objective of approximate actuarial equivalence and undermine the insurer's ability to adequately protect itself and its non-withdrawing policyholders from anti-selection and disintermediation. The commentators explained, that for an installment-payout provision to produce equity between withdrawing and non-withdrawing contractholders, and to prevent anti-selection and disintermediation, the length of the payout period must bear some reasonable relationship to the maturities of the investment portfolio supporting the insurer's liability to the contractholder under such provision. The commentators concluded that a five-year payout with a maximum interest rate reduction of 1% is insufficient to adequately protect an insurer's general account based on the typically longer maturities of investments in insurers' general accounts that fund retirement benefits.

To resolve these concerns, several commentators requested that the Department modify the proposed regulation to permit insurers to offer policyholders at least one of several termination methods, at the option of the insurer. Under this alternative, insurers would have the discretion to either not offer a lump sum option, offer a lump sum option without a positive market value adjustment, or offer a book value payment over a period in excess of 5 years *e.g.,* 10 years) with interest at a credited rate reduced by more than 1 percent.

The Department believes that allowing the insurer to determine the termination methods that will be offered to policyholders could have a negative impact on terminating Transition Policies. Therefore, the Department has decided not to adopt the commentators' requested modifications in the final exemption. However, the Department finds merit in the arguments submitted by the commentators with respect to the length of the book value payout term and has been persuaded that the term of the book value payout option should more closely reflect the maturity of the investments in the general account. Accordingly, on the basis of the comments, the Department has modified

the book value alternative in subsection (e)(2) of the final regulation to permit a policyholder to receive book value payment over a period of no more than ten years with interest at the rate credited on the contract minus 1 percent.

Several commentators requested that the Department provide an exception from the termination procedures during extraordinary circumstances to avoid the risk of severe disintermediation. The Department concurs with this request and has modified paragraph (e) to provide that the insurer may defer, for a period not to exceed 180 days, amounts required to be paid to a policyholder under paragraph (e) for any period of time during which regular banking activities are suspended by State or federal authorities, a national securities exchange is closed for trading (except for normal holiday closings), or the Securities and Exchange Commission has determined that a state of emergency exists which may make such determination and payment impractical.

6. Insurer-Initiated Amendments

Proposed paragraph (f) described the notice requirements and payout provisions governing insurer-initiated amendments. Under the proposed paragraph, if an insurer makes an insurer-initiated amendment, the insurer must provide written notice to the plan at least 60 days prior to the effective date of the amendment. The notice must contain a complete description of the amendment and must inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds in accordance with paragraph (e)(1) or (e)(2) by sending a written request to the name and address contained in the notice. Proposed paragraph (f), unlike the more general termination provisions set forth in paragraph (e), was to be applicable upon publication of the final regulation in the **Federal Register**.

An insurer-initiated amendment was defined in proposed paragraph (h)(8) as an amendment to a Transition Policy made by an insurer pursuant to a unilateral right to amend the policy terms that would have a material adverse effect on the policyholder; or certain unilateral enumerated changes that result in a reduction of existing or future benefits under the policy, a reduction in the value of the policy or an increase in the cost of financing the plan or plan benefits, if such change has more than a *de minimis* effect.

One commentator expressed the view that the definition should be modified to include any insurer-initiated amendment that is unfavorable to the plan. Two commentators suggested that any insurer-initiated amendment to a general account contract should eliminate the contract's ability to qualify as a Transition Policy. In this regard, one of the commentators urged the Department to adopt a standard under which there would be a rebuttable presumption that any insurer-initiated amendment has a material adverse effect on the policyholder. The Department has determined not to revise this definition as requested in recognition of the fact that many Transition Policies represent long term relationships that may require minor changes over time.

Other commentators requested that the Department reconsider the *de minimis* standard set forth in subparagraph (h)(8)(ii) of the definition. These commentators stated that the definition was so broad that it would be impossible for any insurer to know whether it is in compliance with these requirements. The commentators suggested that the Department modify the definition to include only unilateral changes that are ''material'' since this is a term that has a well understood meaning. After consideration of the comments, the Department has concluded that it would be appropriate under the final regulation to modify the definition of the term ''insurer-initiated amendment'' to include only unilateral changes that have a material adverse effect on the policyholder. To further clarify this matter, paragraph (h)(8) of the final regulation includes a definition of the term ''material.''

Several commentators requested that the Department restate subparagraph (h)(8)(ii)(G), from ''[a] change in the annuity purchase rates'' to ''[a] change in the guaranteed annuity purchase rates.'' A commentator stated that changes in the market purchase rates for annuities are based on current interest rates and, accordingly, should not be considered an insurer-initiated amendment. Conversely, the commentator represented that modifying the guaranteed purchase rate would be considered an insurer-initiated amendment since it is usually prohibited by the contract or by State law. Another commentator suggested that the Department modify subparagraph (h)(8)(ii)(G) to include ''a change in the annuity purchase rates guaranteed under the terms of the contract or policy, unless the new rates are more favorable for the policyholder.'' On the basis of these comments, the Department has determined to make modifications to subparagraph (h)(8)(ii)(G).

Several commentators requested that the Department clarify that any amendment or change that is required to be made to a Transition Policy to comply with applicable federal or State law or regulation (including this regulation), or to convert the policy to a ''guaranteed benefit policy,'' is not an insurer-initiated amendment. A number of commentators urged the Department to clarify that a demutualization [9] or similar reorganization will not result in an insurer-initiated amendment. The commentators represented that policyholders retain all of the benefits under the policies to which they would have been entitled if the reorganization had not occurred. The policies remain in force with no change in their terms, except that the membership interest in the mutual company is removed from the policy and evidenced separately (*e.g.,* by shares of stock). In further support of their position, the commentators argue that the Internal Revenue Service has held that where the terms and conditions of the contracts remain the same, a reorganization will not cause contracts issued by the insurer on or before the date of the proposed reorganization to be treated as new contracts for purposes of determining the date of issuance of the contract.[10]

The Department is unable to conclude that all changes made to a Transition Policy in order to comply with any applicable federal or State law, or to convert the policy to a guaranteed benefit policy, are changes that would not have a material adverse effect on a policyholder. However, the Department has determined to modify subparagraph (h)(8)(iv) to clarify that amendments or changes which are made: (1) With the affirmative consent of the policyholder; (2) in order to comply with section 401(c) of the Act and this regulation; or (3) pursuant to a merger, acquisition, demutualization, conversion, or reorganization authorized by applicable State law, provided that the premiums, policy guarantees, and the other terms and conditions of the policy remain the same, except that a membership interest in a mutual insurance company may be relinquished in exchange for separate consideration (e.g. shares of stock or policy credits); are not insurer-initiated amendments for purposes of the final regulation. The Department also has made parallel changes to subparagraph (h)(6)(ii) of the final regulation to clarify that such changes will not cause a policy to fail to be a Transition Policy.

[9] This involves a conversion from a mutual insurance company to a publicly owned stock company.

[10] See Rev. Proc. 92–57, 1992–2 C.B. 410.

One commentator suggested that subparagraph (h)(8)(iii) be revised to omit the word ''affirmative'' which precedes the word ''consent'' in the proposed regulation. According to the commentator, it should be acceptable to the Department for the insurer to send notice of a prospective change to the policyholder with an appropriate lead time during which the policyholder has time to object to the change. The policyholder's affirmative consent to an amendment or change was a necessary element of the Department's determination to exclude such amendments or changes from the definition of insurer-initiated amendment. Because the Department continues to believe that the policyholder's affirmative consent is a necessary protection against insurer-initiated amendments which may be adverse to the policyholder, it has determined not to adopt the commentator's suggested modification.

7. Prudence

Proposed paragraph (g) set forth the prudence standard applicable to insurance company general accounts. Unlike the prudence standard provided in section 404(a)(1)(B) of ERISA, prudence for purposes of section 401(c)(3)(D) of ERISA is determined by reference to all of the obligations supported by the general account, not just the obligations owed to plan policyholders.[11]

Two commentators concurred with the standard of prudence established in the regulation. One of the commentators was pleased because paragraph (g) makes it clear that the prudence standard applies regardless of whether general account assets are also considered to be plan assets under ERISA. The commentator believed that the prudence standard contained in paragraph (g) addresses the conflict between State insurance laws which require that general account assets be managed so as to maintain equity among all contractholders, policyholders, creditors and shareholders and the ERISA fiduciary rules which require that plan assets be managed solely in the interests of, and for the exclusive purpose of, providing benefits to plan participants and their beneficiaries. The other commentator suggested that application of this standard could lead to more limited investment opportunities for general account assets and lower returns than currently achievable under State investment laws. In turn, this could lead to increased plan contributions for defined benefit plans in order to maintain current benefit levels. In this regard, the Department notes that the prudence standard set forth in the proposal merely implements subsection 401(c) of ERISA which contains the prudence standard that is the subject of the commentator's concern.

8. Definitions

Accumulation Fund

Proposed paragraph (h)(5) defined the term ''accumulation fund'' as the aggregate net considerations (*i.e.,* gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to such Transition Policy less partial withdrawals, benefit payments and less all charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.

A commentator requested modification of the term ''accumulation fund'' to satisfy the commentator's concern that upon termination, a policyholder would not be able to withdraw from the policy amounts set aside to pay benefits under the policy. The commentator suggested that the definition be revised to read as follows:

> The term ''accumulation fund'' means the aggregate net considerations (*i.e.,* gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to such Transition Policy less partial withdrawals, benefit payments, amounts accrued or received under the Transition Policy for the purpose of providing benefits which are guaranteed by the insurer and less all charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.

The Department believes that the term ''accumulation fund'' as defined and used in context in the proposed regulation correctly reflects the meaning intended by the Department. Therefore, after consideration of the comment, the Department has determined not to adopt the requested modification.

Market Value Adjustment

Proposed paragraph (h)(7) defined the term ''market value adjustment'' as an adjustment to the book value of the accumulation fund to accurately reflect the effect on the value of the accumulation fund of its liquidation in the prevailing market for fixed income obligations, taking into account the future cash flows that were anticipated under the policy. An adjustment is a ''market value adjustment'' within the meaning of this definition only if the insurer has determined the amount of the adjustment pursuant to a method which was previously disclosed to the policyholder in accordance with paragraph (c)(3)(i)(D), and the method permits both upward and downward adjustments to the book value of the accumulation fund.

One commentator stated that the market value adjustment definition needs to be clarified and modified in order to encompass all reasonable types of market value adjustment formulas currently in use by the industry, but did not suggest any specific types of market value adjustment formulas for the Department's consideration. A commentator suggested that, for purposes of clarification, the first sentence of the market value adjustment definition in paragraph (h)(7) should be revised to read as follows:

> For purposes of this regulation, the term ''market value adjustment'' means an adjustment to the book value of the accumulation fund to accurately reflect the effect on the value of the accumulation fund of its liquidation in the prevailing market for fixed income obligations, taking into account the future cash flows that were anticipated under general account assets.

After consideration of the comments regarding market value adjustment, the Department believes that the definition, as set forth in the proposed regulation, is sufficiently flexible to address the commentator's concerns and that no further modification is necessary.

9. Limitation on Liability

Proposed paragraph (i)(1) provided that no person shall be liable under Parts 1 and 4 of Title I of the Act or section 4975 of the Code for conduct which occurred prior to the effective dates of the regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. Paragraph (i)(1) further provided that the above limitation on liability will not apply to: (1) An action brought by the Secretary of Labor pursuant to paragraph (2) or (5) of section 502(a) of the Act for a breach of fiduciary responsibility which would also constitute a violation of Federal or State criminal law; (2) the application of any Federal criminal law; or (3) any civil

[11] In this regard, the Department notes in the proposal that nothing contained in the proposal's prudence standard modified the application of the more stringent standard of prudence set forth in section 404(a)(1)(B) of ERISA as applicable to fiduciaries, including insurers, who manage plan assets maintained in separate accounts, as well as to assets of the general account which support policies issued after December 31, 1998.

action commenced before November 7, 1995.

Proposed paragraph (i)(2) stated that the regulation does not relieve any person from any State law regulating insurance which imposes additional obligations or duties upon insurers to the extent not inconsistent with this regulation. Thus, for example, nothing in this regulation would preclude a state from requiring an insurer to make additional disclosures to policyholders, including plans.

Proposed paragraph (i)(3) of the regulation made clear that nothing in the regulation precludes a claim against an insurer or others for a violation of ERISA which does not require a finding that the underlying assets of a general account constitute plan assets, regardless of whether the violation relates to a Transition Policy. For example, a Transition Policy would give rise to fiduciary status on the part of the insurer if the insurer had discretionary authority over the administration or management of the plan. See section 3(21) of the Act. Thus, nothing in ERISA or this regulation would preclude a finding that an insurer is liable under ERISA for breaches of its fiduciary responsibility in connection with plan management or administration. Similarly, neither ERISA nor the regulation precludes a finding that an insurer is a fiduciary by reason of its discretionary authority or control over plan assets. If the insurer breaches its fiduciary responsibility with respect to plan assets, it would be liable under ERISA regardless of whether the insurer has issued a Transition Policy to a plan or ultimately placed the plan's assets in its general account.

Paragraph (i)(4) of the proposed regulation provided that if an insurer fails to meet the requirements of paragraphs (b) through (f) of the regulation with respect to a specific plan policyholder, the result of such failure would be that the general account would be subject to ERISA's fiduciary responsibility provisions with respect to the specific plan for that period of time during which the requirement of the regulation was not met. Once back in compliance with the regulation, the insurer would no longer be subject to ERISA (other than this regulation) or have potential liability under ERISA's fiduciary responsibility provisions for subsequent periods of time when the requirements of the regulation are met. In addition, the regulation made clear that the underlying assets of the general account would not constitute plan assets for other Transition Policies to the extent that the insurer was in compliance with the requirements of the regulation.

Several commentators were concerned that under proposed paragraph (i)(4), an insurer's single (or *de minimis*) inadvertent failure to satisfy the conditions in the regulation might require a portion of every asset in the insurer's general account to be a plan asset for the period of noncompliance, thus subjecting the insurer to increased liability for fiduciary violations. The commentators believed that this ''all or nothing'' rule could cause significant disruption to the insurer and hinder the insurer's investment activities. The commentators believed that this result was not compelled by section 401(c) of the Act.

The commentators suggested that the Department: (1) Clarify that any finding that assets of an insurer are plan assets as a result of an instance of noncompliance should be operative only with respect to the dispute between the policyholder and the insurer; (2) modify the proposed regulation to state that the transition relief provided will be available if the insurer adopts reasonable procedures to implement the requirements of the regulation and takes reasonable steps to implement those procedures; (3) provide that an insurer's unintentional failure to comply with the regulation, that is not a result of willful neglect, will not cause any general account assets to become plan assets if the insurer cures such failure within 60 (or 90) days after discovering or being notified of the failure to comply and makes the plan or plans whole for any monetary loss resulting from the non-compliance. Alternatively, commentators suggested that the Department permit the insurer to remedy any failure to comply with the regulation, due to reasonable cause and not to willful neglect, within 30 days of receipt of notice of such noncompliance and to extend this ''cure'' period if state insurance department approval is required. Additionally, a commentator urged the Department to provide that failure to comply with the regulation should only be effective with respect to the adjudication of the action in which the finding is made.

The Department concurs with the commentators' assertions that the consequences of an insurer's *de minimis* or inadvertent failure to comply with the regulation may be too severe. Accordingly, the Department has amended subparagraph (i)(4) of the regulation to provide that a plan's assets will not include an undivided interest in the underlying assets of the insurer's general account notwithstanding the fact that the insurer has failed to comply with the requirements of paragraphs (c) through (f) of the regulation with respect to a plan if the insurer cures the non-compliance in accordance with the requirements of subparagraph (i)(5), which describes the steps that an insurer may take to avoid plan asset treatment with respect to the underlying assets of the insurer's general account.

Pursuant to subparagraph (i)(5), an insurer must have in place written procedures that are reasonably designed to assure compliance with the regulation, including procedures reasonably designed to detect and correct instances of non-compliance. In addition, within 60 days of either detecting an instance of non-compliance or receipt of written notice of non-compliance from a plan, whichever occurs earlier, the insurer must comply with the regulation. Under this cure provision, the insurer would be required to make the plan whole for any losses resulting from the non-compliance. By following the procedure described in subparagraph (i)(5), the insurer could continue to take advantage of the safe harbor provided by the regulation, notwithstanding its initial failure to comply with one or more of the regulation's requirements. The Department believes that giving insurers a limited opportunity to cure their non-compliance and to compensate affected policyholders for any losses resulting from the non-compliance, will both address the concerns expressed by the commentators and continue to protect the interests of the policyholders from expense and unnecessary delays.

10. Effective Date

Proposed paragraph (j)(1) stated the general rule that the regulation is effective 18 months after its publication in the **Federal Register**. Paragraph (j)(2), (3) and (4) of the proposed regulation provided earlier effective dates for paragraph (b) relating to independent fiduciary approval, paragraphs (c) and (d) relating to disclosures, and paragraph (f) relating to insurer-initiated amendments.

Paragraph (j)(2) of the proposed regulation stated that if a Transition Policy was issued before the date which is 90 days after the date of publication of the final regulation, the disclosure provisions in paragraphs (c) and (d) would take effect 90 days after the publication of the final regulation. Paragraph (j)(3) of the proposed regulation provided that paragraphs (c) and (d) were effective 90 days after the date of publication of the regulation for a Transition Policy issued after such date.

Proposed paragraph (j)(4) provided that the effective date for paragraphs (b) and (f) of the proposed regulation is the date of publication of the final regulation in the **Federal Register**. In addition, this paragraph provided a special rule for insurer-initiated amendments which are made during the period between the dates of publication of the proposed and final regulations. The rule provided that, if a plan elected to receive a lump sum payment on termination or discontinuance of the policy as a result of an insurer-initiated amendment, the insurer must use the more favorable (to the plan) of the market value adjustments determined on either the effective date of the amendment or determined upon receipt of the written request from the plan in calculating the lump sum representing the unallocated funds in the accumulation fund.

A number of commentators believed that, in the case of Transition Policies issued after a date that is 120 days after the date of issuance of the final regulations, the initial disclosures may be provided at the time of issuance of the policy. In their view, no other exception to the general 18 month effective date contained in section 401(c)(1) of the Act is appropriate or would allow insurers sufficient time to prepare the necessary disclosure with respect to thousands of previously issued policies to ensure compliance. In addition, the commentators requested that the date required for distribution of annual disclosures (contained in paragraph (c)(4) of the proposed regulation) be extended from 90 days to 180 days following the period to which it relates to allow for sufficient time for the substantial amount of information to be disclosed. Another commentator stated that the earlier effective dates for insurer-initiated amendments do not provide the insurer with sufficient time to implement the changes necessary to be able to comply with the regulation or to be able to determine precisely what constitutes an insurer-initiated amendment.

In the case of a plan electing a lump sum payment, one commentator objected to the proposed paragraph (j)(4) provision that the insurer must use the market value adjustment determined on either the effective date of the amendment or determined upon receipt of the plan's written request, depending on which is more favorable to the plan. The commentator believed that this will create serious and damaging anti-selection potential as the contractholder will have the ability to determine, at its option, the more favorable of the two dates for the determination of the market value adjustment. To avoid this result, the commentator suggested that the market value adjustment should be determined as of the date the funds are actually withdrawn.

The Department continues to believe that the earlier effective dates for the disclosure provisions are consistent with section 401(c)(3)(B) of the Act, as added by SBJPA, which states that the disclosures required by the regulation be provided after the date that the regulations are issued in final form. In addition, section 401(c)(5)(B)(i) of the Act, as added by SBJPA, provides an exception to the general 18-month effective date for regulations intended to prevent the avoidance of the regulations set forth herein. Thus, the Department proposed an earlier effective date for the provisions relating to the independent fiduciary approval, disclosure and insurer-initiated amendments because the Department believed that the earlier effective dates would protect the interests and rights of a plan and its participants and beneficiaries by minimizing the potential for insurers to change their conduct in ways which are disadvantageous to plan policyholders without compliance with the terms and conditions of the regulation. The Department, therefore, finds good cause for waiving the customary requirement to delay the effective date of a final rule for 30 days following publication.

The Department notes that, because no new Transition Policies can be issued after December 31, 1998, it is no longer necessary to differentiate between Transition Policies issued before and after the date of publication of the final regulation. Therefore, those provisions in proposed subparagraphs (j)(2) and (j)(3) which contain different effective dates based upon the date of issuance of the Transition Policy have been eliminated. In response to a number of comments which indicated that state insurance departments may require that insurers file for approval of amendments to policies, the Department has adopted a new subparagraph (j)(2) which states that the initial disclosure provision and separate account disclosure provision in paragraphs (c) and (d) are applicable six months after publication of the final regulation. The Department believes that a period of six months from the date of publication would allow insurers sufficient time to produce the disclosure materials and seek any necessary state approvals.

Several commentators requested that the Department clarify the applicable date for the initial annual report. The Department has modified subparagraph (j)(3) to provide that the initial annual report required under subparagraph (c)(4) must be provided to each plan no later than 18 months after publication of the final regulation. Subsequent reports shall be provided at least annually and not later than 90 days following the period to which it relates. In consideration of the comments regarding the harshness of the special rule in subparagraph (j)(4) for insurer-initiated amendments which were made during the period between publication of the proposed and final regulations, the Department has determined to eliminate that provision. The Department has added a new paragraph (k) which contains the effective date for the regulation.

11. Miscellaneous Comments

Several commentators represented that the Department exceeded the scope of its authority with respect to a number of the provisions contained in the proposed regulation. In this regard, the Department notes that section 401(c)(1)(A) of the Act authorizes the Secretary of Labor to issue regulations to provide guidance in determining which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets and to provide guidance with respect to the application of Title I of ERISA to the general account assets of insurers. The Department believes that this broad grant of authority to provide guidance authorized the issuance of the regulations proposed by the Department. Accordingly, the Department believes that the commentators' arguments have no legal basis.

A commentator urged the Department to clarify in the preamble to the final regulation that certain ''traditional'' guaranteed investment contracts (GICs) are guaranteed benefit policies under the Act. In support of its position, the commentator explained that, under a traditional GIC, an insurance company promises to pay a guaranteed rate of interest for a fixed period (*i.e.*, until a stated maturity date) with the rate of interest being a fixed rate (*e.g.*, 6.0%) guaranteed for the fixed period, or a rate which is periodically reset by reference to an independently maintained index (*e.g.*, LIBOR). Under this type of GIC, the principal invested is guaranteed to be repaid at maturity, and the rate of return on the amount invested is not dependent on the performance of the assets in the insurer's general account or any other assets. In the Department's view, a GIC containing the above described terms would constitute a guaranteed benefit policy within the meaning of section 401(b)(2)(B) of the Act. In addition, the Department wishes

to take the opportunity to state that no presumption should be drawn, from its determination to provide limited interpretive guidance, regarding the status of other insurance policies under section 401(b)(2)(B) of the Act.

Some commentators expressed concern that an insurer's decision to comply with the conditions in the regulation with respect to certain general account contracts issued to plans would be perceived as a determination that such policies are not guaranteed benefit policies. In this regard, the Department notes that no inference should be drawn regarding the status of any general account contract issued to a plan merely because the insurer has elected to comply with the regulation.

Economic Analysis Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in, among other things, a rule raising novel policy issues arising out of the President's priorities. Pursuant to the terms of the Executive Order, the Department has determined that this is a ''significant regulatory action'' as that term is used in Executive Order 12866 because the action would raise novel policy issues arising out of the President's priorities. Therefore, the Department has undertaken to assess the benefits and costs of this regulatory action. The Department's assessment, and the analysis underlying that assessment, are detailed below.

The main features of the regulation which cause an economic impact: (1) Provide for greater disclosure to employee benefit plans concerning certain general account contracts with insurance companies; (2) provide, in those cases where an insurance company chooses to comply with the regulation, that some employee benefit plans may receive enhanced termination options; (3) provide insurance companies guidance in determining the circumstances under which a contract with an employee benefit plan will cause the general account to hold plan assets; (4) relieve insurance companies from certain requirements imposed by ERISA if they were to hold plan assets; and (5) provide insurers an opportunity to correct compliance errors with respect to the regulation without facing the full consequences of noncompliance in terms of being considered to hold plan assets.

The regulation establishes conditions that must be met in order for certain contractual arrangements to not result in the insurer's general account holding ERISA plan assets. Compliance with the regulation is voluntary, except for a general prudence standard. Its economic consequences, therefore, arise only when insurance companies elect to avail themselves of this opportunity, presumably only those insurance companies expecting the benefits of the regulation to exceed its costs.

The Department believes that the benefits of the regulation to insurance companies, although difficult to quantify, will exceed its costs to them, and expects that all insurance companies affected by the *Harris Trust* decision will choose to comply. Because the regulation also provides benefits to plans, participants and beneficiaries, as well as to financial markets generally, while imposing little costs on them, the Department expects that the benefits of the regulation will considerably exceed its costs.

The costs and benefits of the regulation concern ''Transition Policies.'' Transition Policies are general account contracts issued on or before December 31, 1998 which are, at least in part, not guaranteed benefit policies. In particular, the value of the benefit provided is related to the investment performance of the insurer's general account.

The regulation does not apply to general account contracts written after December 31, 1998, and for that reason the Department believes that it causes neither benefits nor costs with respect to those contracts. However, in the absence of the safe harbor provided by this regulation, the costs to an insurance company of any of those contracts which would result in the general account holding ERISA plan assets are so great relative to the benefits that no insurance company will offer general account contracts with nonguaranteed elements.

The regulation will result in a range of benefits that will primarily accrue to parties directly involved in the affected contracts, the insurance companies that have sold the policies and the employee benefit plans that entered into these arrangements. Insurance companies will benefit from the clarity regarding the circumstances in which they will be holding plan assets. This will afford greater flexibility in their efforts to manage the risks associated with engaging in transactions with employee benefit plans and the capacity to more efficiently make investment decisions. They will also obtain some benefit from the provisions that enable them to correct certain errors that would otherwise result in their holding plan assets.

Employee benefit plans, and by extension the participants who are the beneficial owners of the contracts, will obtain some advantages as a result of the increased disclosure of information that will improve their ability to develop and adjust investment strategies and through potentially more favorable circumstances under which contracts could be terminated. In addition, the regulation will provide some more general indirect benefits to the economy through greater transparency and efficiency in the operation of financial markets.

There will be some expenses incurred by insurance companies to achieve these benefits. The Department perceives these as generally falling into two categories: (1) Expenses associated with fulfilling procedural requirements which represent costs in an economic sense, and (2) expenses that represent payments by insurance companies associated with the liquidation of contracts at levels above what might have been made absent the regulation. The Department views the second category as transfers between affected parties with the expense of one exactly offset by the gain of another and therefore not to be costs in an economic sense.

It has also been suggested that the regulation would impose some indirect costs on insurance companies and employee benefit plans because insurers electing to restructure their contracts to comply with the terms of the regulation would alter the composition of their general account portfolios. Particular attention was focused on the question of insurers hedging their exposure to interest rate movements that might diminish the returns available to the policyholders of general account products. The Department does not interpret this potential outcome as a cost by virtue of the fact that compliance with the regulation is elective and employee benefit plans have access to a range of substitutes for general account products. This enables them to purchase investment products across the full range of risk and return available without regard to products offered by insurance companies.

The Department does not construe the outcome of competition in financial markets by itself to represent economic costs. These outcomes are instead interpreted to be benefits to the extent that regulatory actions enhance the transparency and therefore the

efficiency of markets. Changes in relative market share that may result from enhanced competition are reflective of the reallocation of resources in a manner more reflective of the preferences of market participants and, absent direct evidence to the contrary, to represent efficiency gains.

As is the case with most regulations of this nature, the benefits of this regulation are difficult if not impossible to specifically quantify. Most of the advantages accrue through indirect mechanisms or represent changes relative to a baseline of future behavior and outcomes that cannot be readily observed or predicted. Some elements of the costs are similarly difficult to estimate. Others, primarily the expenses associated with meeting certain procedural or disclosure requirements are more easily estimated. Recognizing these limitations, a more complete discussion of the various elements of costs and benefits relevant to the regulation and specific estimates of the magnitude where feasible is presented below.

Benefits of the Regulation

The regulation is expected to have significant direct benefits to employee benefit plans. It satisfies the requirement in section 401(c)(2)(B) of ERISA that the interests of employee benefit plans that hold insurance company general account contracts be protected, and thus their participants and beneficiaries, through the requirement of certain disclosure and termination rights. Through mandatory disclosure by insurance companies of information concerning the determination of costs and income from general account contracts, disclosure of the conditions under which termination may occur, and disclosure of information about the financial strength of the insurance company, the regulation will increase the amount of information available to employee benefit plans concerning insurance company general account contracts. The information insurance companies disclose will allow employee benefit plan fiduciaries and participants to fully understand how insurance companies determine the expenses and rate of return they assign to a contract.

Greater disclosure of information will enable employee benefit plans to improve the quality of investment decisions. The complex nature of the insurance products can make it difficult for employee benefit plans to determine the risks associated with contracts backed by insurance company general accounts. With the improved disclosure, employee benefit plans will better understand the risks associated with general account contracts and the net rate of return they can expect to receive. The enhanced information will increase their ability to manage their portfolios and allocate assets in a manner consistent with the specific needs and circumstances of the plan. Plans making decisions to restructure their asset allocation or change other aspects of their investment strategy will benefit from a clearer explanation of their rights under specific policies. Enhancing the information about the specific attributes of complex financial products will have a positive effect on market efficiency as the purchasers incorporate this information into investment decisions and vendors respond to the resulting competitive pressures.

Expected rate of return, risk and correlation of risks are three elements critical to effective portfolio decisions. The provision of more complete information by insurance companies due to this regulation allows employee benefit plans to better approximate the ideal portfolios that they would choose if they had full information about the financial characteristics of all possible investments.

This benefit of the regulation in principle could be measured by determining the increase in total investment income received on the portfolio the employee benefit plan has, holding constant its level of portfolio risk. This measure of the benefits of the regulation is difficult to quantify because of changing conditions over time in financial markets, so that any change in portfolio rate of return may be due to other factors. A further complicating factor is that the provision of more detailed information may also cause employee benefit plans to change the amount of risk they wish to hold. It is difficult to assess the value to plans of having better information about the financial risks associated with these contracts.

The termination provisions are another major source of benefits from the regulation to employee benefit plans and their participants. The termination provisions in the regulation may require insurers to give additional rights to employee benefit plan policyholders that their general account contracts did not previously contain. For many general account contracts, the regulation will liberalize payout options for employee benefit plans beyond those that were previously available. For other general account contracts, it will create new payout options. The termination provisions provide at least three benefits. First, the termination provisions allow employee benefit plans to terminate general account contracts that contain provisions or changes in provisions they view as unfavorable. Second, the termination provisions may discourage some insurance companies from making unilateral contract changes that are adverse to employee benefit plans. Third, the termination provisions provide greater liquidity that allows plans to adjust to changing financial market conditions. A discussion of these three benefits of the termination provision follows.

First, employee benefit plans will benefit from the regulation by being able to terminate a general account contract if an insurance company unilaterally modifies such a contract to the detriment of the employee benefit plan. The termination provisions considerably enhance the value to employee benefit plans of the disclosure provisions since they increase the range of actions that can be taken as a result of better information being disclosed. Thus, the regulation gives employee benefit plans greater protection against unilateral action taken by insurance companies.

A second benefit of the termination provisions to employee benefit plans is that those provisions will discourage insurance companies from making some contract changes that are detrimental to the interests of employee benefit plans that they would otherwise make.

A third benefit of the termination provisions is that they provide employee benefit plans increased liquidity in their general account contracts. If an employee benefit plan faces an unanticipated expense and is forced to terminate its general account contract to obtain cash, the plan may be able to do so under more favorable conditions. In some cases, the plans will receive greater proceeds from a contract liquidation. For lump sum payouts, this is because the regulation requires that positive market value adjustments be given where they would not otherwise have been prior to the effective date of the regulation. Also for structured payouts, a minimum crediting rate that is also higher than some contracts provide is required. The choice of two payout options provides increased flexibility to many employee benefit plans.

The increased liquidity provided by the termination provisions also allows employee benefit plans to profit from changing conditions. For example, a change in interest rates may cause an employee benefit plan to adjust investment strategies. The regulation may permit the plan to terminate its general account insurance contract and

move its funds to the more attractive alternative.

The value of the benefit to employee benefit plans derived from the enhanced ability to terminate contracts following unilateral contract amendments by insurance companies is difficult to quantify. Plans will not be forced to accept contract modifications that they view as undesirable. The value of this benefit depends on the frequency that such modifications would occur and the value placed on this protection by employee benefit plans. The value of the benefit to employee benefit plans of discouraging some contract modifications by insurance companies is also difficult to quantify because there is no reliable way to estimate the number of contract modifications with adverse implications for plans that would otherwise occur.

As well as providing benefits to employee benefit plans and their participants and beneficiaries, the regulation provides benefits to insurance companies. The most significant of these results from the ability of insurance companies to expand the universe of investments that otherwise would be prohibited. In the absence of the regulation, with insurance companies holding plan assets in their general accounts, some investments would not be possible because they would involve potential self-dealing and conflicts of interest.

The regulation may provide significant benefits to insurance companies because it clarifies and mitigates the constraints imposed by ERISA on the operation of insurance company general accounts. It does so by providing that insurance companies that comply with the specific requirements of the regulation will receive some assurance that their general accounts do not contain plan assets. Insurance companies thus could have reduced litigation costs and liabilities with respect to their general accounts. They will be shielded from the fiduciary responsibility and prohibited transactions rules under ERISA that would otherwise apply to them as a result of the *Harris Trust* decision.

Because of the retroactive effect of the Supreme Court decision, numerous transactions by insurance company general accounts may have violated ERISA's prohibited transaction and general fiduciary responsibility provisions. Without the safe harbor the regulation affords, some insurance companies would be liable under part 4 of Title I of ERISA as a result of the operation of their general accounts.

This regulation provides insurance companies the benefit of reduced uncertainty concerning the application of ERISA. Some insurance companies may be uncertain as to whether the general account contracts they have with employee benefit plans are affected by the *Harris Trust* decision. This uncertainty arises primarily from what constitutes a guaranteed benefit policy.

The value to insurance companies of less uncertainty arises in part through lower fees they would pay to attorneys and other benefits specialists to try to resolve the uncertainty. Also, insurance companies may be overly conservative in attempting to avoid holding ERISA plan assets. The lowering of risk in this regard will allow insurance companies to pursue business they might otherwise avoid.

The cure provision in the regulation is an additional source of benefits. Insurance companies under certain circumstances can correct certain errors in compliance with the regulation without causing the company to hold employee benefit plan assets. This feature of the regulation greatly reduces the risk of an inadvertent failure of an insurer to comply with the regulation that would result in them holding plan assets.

This cure provision should reduce the likelihood of litigation between employee benefit plans and life insurance companies. The ability to correct errors without incurring the risk of future liability should reduce the incidence of noncompliance and substantially reduce costs for insurance companies to correct inadvertent errors.

The value of the benefits arising from the cure provision are positive but impossible to accurately measure. They will depend on the extent that insurance companies make inadvertent or good faith errors and then use the cure provision to correct them. The level depends on the cost to insurance companies of correcting the errors under the regulation in relation to what would have otherwise occurred. The cure provision also affords benefits to employee benefit plans because it reduces the likelihood of failure to comply with the regulation. This is similarly impossible to quantify.

The value of these benefits to insurance companies should be substantially shifted to employee benefit plans over time through a higher net rate of return received on life insurance company general account contracts so long as insurance companies remain competitive. This will increase the investment income of defined benefit plans holding those contracts. An increase in investment income will over the longer term lead to either a reduction in contributions required or allowed by plan sponsors or to an increase in benefits. A reduction in contributions by plan sponsors would reduce their corporate income tax deductions and raise their corporate tax payments. Increased benefits will result in higher taxable income received by beneficiaries.

The regulation will have a relatively small but positive benefit to the Federal government, and thus taxpayers, by reducing the need for employee benefit investigation, enforcement and litigation activities of the government. By reducing the number of violations of ERISA through compliance with the safe harbor provisions of the regulation, and by providing through the cure provision the incentive for insurance companies to self-correct minor compliance problems, investigation, enforcement and litigation expenses of the government may be reduced.

As well as the direct benefits discussed above, the regulation has indirect benefits through improved functioning of financial markets. The indirect benefits are positive externalities that benefit all participants in financial markets through the greater efficiency of the functioning of those markets. The positive externalities are benefits received by parties other than insurance companies and employee benefit plans, participants and beneficiaries. With more efficiently functioning capital markets, capital is directed to its best use, which benefits not only the investor but also enterprises seeking investors. Thus, this is a benefit to the economy at large. The termination provisions of the regulation also provide positive externalities in that by providing greater financial market liquidity, there is freer movement of capital so it can be applied to its best use.

Costs of the Regulation

As with the benefits, the costs of the regulation are both direct and indirect. Direct costs should fall nearly exclusively on insurance companies rather than on plans, participants and beneficiaries. Although, some commentators have argued that there may be indirect costs to the economy through effects on the functioning of capital markets, as discussed in more detail below, the Department believes those costs to be insignificant or nonexistent.

Three types of direct costs are relevant. Insurance companies will bear some costs that are effectively transfers to plans. While these may be viewed as costs in the accounting sense, they result in little or no net cost to the economy, as the cost to the insurance

company is exactly offset by the benefit received by the employee benefit plan.

Second, there are direct costs that arise because insurance companies undertake certain activities in order to fall within the requirements of the regulation. These will primarily take the form of increased payments to service providers or insurance company employees. These type of costs represent costs in both an accounting as well as an economic sense and are the primary burden imposed by the regulation.

A third type of cost are those potentially associated with a distortion of economic activity. These also represent a net cost to the economy. Typically these distortions are associated with taxation. Distortions can also potentially result from government regulations requiring activities or expenditures which exceed the associated benefits.

Insurance companies will incur administrative costs due to the disclosure and termination requirements. To comply with increased disclosure requirements, they will incur costs to prepare and distribute the annual statement to employee benefit plans explaining the methods by which income and expenses of the insurance company's general account are allocated to the policy. To minimize these costs, the regulation requires disclosure of materials that are prepared for other purposes. One time only administrative costs will be incurred by insurance companies to modify contracts so that they will comply with the regulation and to file revised contracts with state regulatory authorities.

The enhanced options for employee benefit plans to terminate their contracts will create administrative costs for insurance companies in that they will be discouraged from making some unilateral contract modifications they otherwise would make. The magnitude of this cost to insurance companies is difficult to quantify because the number and effect of contract modifications that will be discouraged from occurring is not readily determinable. This cost to insurance companies is largely a benefit to employee benefit plans and participants and beneficiaries.

Some commentators have argued that the regulation will impose costs on insurance companies in financial markets. Because the termination options will permit some contracts to be terminated earlier than otherwise, insurance companies may adjust the investments in their portfolios. The increased probability of early termination shortens the period over which the preponderance of payments are made. To the extent that insurance companies attempt to match the timing of their receipts and payouts, they will shorten the timing of their receipts.

Insurance companies with a significant percentage of affected funds in their general account may make fewer long maturity investments and private placements. Long maturity investments are investments where the preponderance of the payments are received relatively far into the future. Private placements are investments that are not publicly traded on financial market exchanges. They may reduce those investments due to their needs for reduced maturity and greater liquidity of investments because of the increased probability of early termination of general account contracts. Both of these changes in maturity of investments and in private placements would reduce the expected rate of return on their portfolios. Lower maturity investments generally receive a lower rate of return than longer maturity investments. Private placements tend to have relatively low liquidity because they are not publicly traded. Liquidity is a desirable aspect of investments and therefore investors must pay a price for it in terms of lowered rate of return. The termination requirements may also cause insurance companies to incur costs in determining the market value of some assets that are not publicly traded, such as private placements. These costs will discourage investments in those types of assets because they will reduce the net rate of return (after costs) on those investments.

Because of the sophistication of capital markets, with a large number of competent purchasers and sellers, any initial effect on capital markets due to insurance companies changing their portfolios and their investment strategies probably would be offset by a re-allocation of investments among investors. If insurance companies reduce their investments in a certain class of assets, the price of those assets will fall due to the reduced demand for the investment, which will raise the rate of return on that investment. The lowered price and increased rate of return will motivate other investors to invest in those assets, which will in turn drive the price up towards its original level. One time only transaction costs will be incurred by insurance companies and other investors as they adjust their portfolios. These costs are primarily fees paid to other financial institutions to transact sales and purchases.

The cure provision creates administrative costs for insurance companies that choose to use it because they are required to establish administrative procedures to detect and correct failures to comply with the regulation. Costs will be incurred in terms of staff time required for creating and maintaining these procedures. These costs are largely quantifiable in terms of specific actions that are required, with the cost of those actions being estimable.

While the increased administrative costs are borne initially by insurance companies choosing to comply with the regulation, they may be shifted at least partially through a reduced rate of return net of expenses to employee benefit plans and then to participants, and to other investors who have contracts supported by the general accounts of those companies. A reduction in the net rate of return received on the general account portfolio may be passed on to employee benefit plans having contracts with participating features. Whether that occurs may be a business decision made by insurance companies depending on the competitive pressures they face or may be determined by their contracts. It may also reduce the rate of return insurance companies offer on new contracts. The extent to which they do that depends in part on the competitive pressures faced by insurance companies. It should be noted again in this context that new contracts will not be covered by the regulation.

These effects on the rate of return received by insurance companies on their general account portfolios generally will be small. For most insurance companies the percentage of general account assets affected is small and thus the effect on the insurance company's portfolio rate of return, which is proportional to the share of those assets in the general account portfolio, is also small. The effects on employee benefit plan rates of return is further diminished to the extent that plans hold other investments. The effect on participants may be even further reduced to the extent that employee benefit plan sponsors bear the effects that are shifted to employee benefit plans.

Employee benefit plans can offset lower risk and expected return from their insurance contracts by increasing the risk and expected return of their other investments. They may also reduce their investments held with insurance companies and shift funds to other financial intermediaries. If these changes are made, there may be no effect on the expected portfolio rate of return for employee benefit plans.

Cost Estimates

The following are the Department's estimates of the potential costs associated with the regulation. The Department's analysis is responsive to the public comments received on the economic impact of the proposed regulation that focused on the potential costs attributable to the regulation. This discussion also reflects additional analysis by the Department in response to changes to the substantive provisions of the regulation and the availability of more recent data.

Direct Costs

The direct costs associated with the regulation are attributable to the disclosure and termination requirements. The discussion that follows provides details of the direct costs associated with the regulation.

1. Impact on the Insurance Industry—Amount of Assets Affected

In connection with its publication of the proposed regulation, the Department solicited comments from the interested public regarding the economic impact of the proposed regulation. Specifically, the Department requested current data on the number and characteristics of potentially affected insurance contracts that would provide the basis for a more extensive analysis of the costs and benefits of the proposed regulation.

The Department received a few comments which disagreed with its estimate of the value of the accounts potentially affected by the regulation of $40 billion in 1994 (slightly less than 3 percent of general account assets). These comments provided limited data on the number of potentially affected insurance contracts. For example, one commentator estimates that based on their reading of the 1997 Life Insurance Fact Book (1996 data), the total value of contracts potentially affected by the regulation is $261.8 billion (15.4 percent of general account assets). It appears that this estimate includes the allocated portions of general account group insurance contracts, whereas the Department excludes the allocated portions of group annuity contracts from its estimates. Allocated group annuity contracts are excluded because the benefits from the contracts are guaranteed and the employee benefit plans do not participate in the risk associated with those contracts. Representatives of the insurance industry estimated for 1996 that the amount of unallocated assets that would be affected by this regulation was approximately $100 billion (6.7 percent of general account assets).

In response to these comments, the Department asked the insurance industry to provide specific information on the amount of affected assets. The industry declined to provide the information, contending the proprietary nature of the data. As an alternative data source the Department used information reported on the Form 5500 reports and attached Schedule A's filed for the 1995 plan year. The Schedule A attachment is required to be filed for all pension plans holding insurance contracts with unallocated funds. Both the amount of unallocated funds and the name of the insurance carrier issuing the policy are reported on the Schedule A. While the manner of reporting unallocated funds held in insurance policies does not enable a precise determination of whether the policies are Transition Policies or other types of policies, the Department believes that reasonable estimates can be derived from the data. Using Form 5500 data, the Department revised its earlier estimates of the amount of assets potentially affected by the regulation and the distribution of those assets within the life insurance industry. The Department now estimates between $80 and $98 billion (between 5.8 and 7.1 percent of general account assets) would have been potentially affected by the regulation in 1995. The Department believes that this estimate comports with that provided by the representatives of the insurance industry.

For the 1995 plan year, a total of 123,567 Schedule A reports were filed by pension plans reporting assets held in contracts with unallocated funds that appear to be used to pay benefits or purchase annuities. It is the Department's belief that these policies are most commonly immediate participation guarantee (IPG) contracts, in which the value is directly related to the investment performance of the insurer's general account. These contracts will therefore meet the definition of a Transition Policy. The total amount of assets reported in Schedule A for these types of contracts was $98 billion.

The following discussion explains how the figures of between $80 and $98 billion were determined. The Schedule A is used both for the reporting of assets in accounts used to provide benefits and for the reporting of assets in accounts used solely for investments. The Schedule A does not have a specific identifier for the type of policy being reported. Contracts were assumed to be purely investment contracts if the Schedule A showed no assets disbursed to pay benefits or purchase annuities during the year and the Form 5500 report indicated that all plan benefits were either paid from a trust or, in the case of a defined contribution plan, were paid through a combination of a trust and insurance carrier.[12] These filings were excluded from the analysis based on the assumption that they are most likely to be guaranteed investment contracts and would therefore not meet the definition of a Transition Policy. The remaining Schedule A's fell into two categories:

(1) If a Schedule A showed funds being disbursed from the account to pay benefits or purchase annuities or the Form 5500 report indicated that all benefits were provided through an insurance carrier, then the funds reported in Item 6 of the Schedule A were assumed to be held in policies meeting the definition of a Transition Policy. The total amount of such funds in 1995 was $80 billion. This amount was used as the lower bound for estimating total general account assets held in Transition Policies.

(2) If a Schedule A showed no assets disbursed to pay benefits or purchase annuities and the Form 5500 report indicated that the plan was a defined benefit plan and benefits were paid both through the trust and an insurance carrier, then the type of contract funds reported in Item 6 of Schedule A was categorized as undeterminable. The total amount of such funds was $18 billion.

The $18 billion estimate of funds in the undeterminable category, combined with the $80 billion in general account funds determined to be used to pay benefits, was used as the upper bound for estimating total general account funds in Transition Policies. There is no way of accurately estimating how much of the $18 billion in the undeterminable category was held in Transition Policies. Therefore, in estimating the total amount of funds held in Transition Policies, the entire $18 billion was added to the lower bound of $80 billion to provide a total estimate of $98 billion held in Transition Policies.[13] This

[12] It appears that defined contribution plans which check that benefits are provided through both a trust fund and an insurance carrier and which attach a Schedule A are generally trust funded plans (with investments in insurance products) that commonly offer participants the choice of a lump sum distribution or an annuity. For participants choosing the latter form of payment, the value of the participant's account is used to purchase an individual annuity. Thus, it was assumed that the assets reported on Schedule A were in investment accounts rather than Transition Policy accounts used to provide benefits.

[13] The DOL had developed an earlier estimate of $40 billion held in Transition Policies. This estimate was based on data reported in Item 31c(16)—(Value of funds held in insurance company general account)and Item 32e(2)—(Payments to insurance carriers for the provision of

amount is in line with the $100 billion estimate provided by the representatives of the insurance industry.

One commentator disagreed with the Department's use of an industry average, *i.e.*, slightly less than 3 percent of general account assets, to demonstrate the percent of total contracts potentially affected by the regulation. The commentator stated that this is inappropriate because many insurers have a significantly higher proportion of assets supporting contracts potentially affected by the regulation than the Department's estimate in the proposed regulation for the industry as a whole. In its re-estimate of the amount of assets affected based on the most recent complete Form 5500 data available (1995), the Department determined that approximately 104 insurance companies each managed $25 million or more of private pension plan unallocated assets in insurance company general accounts and about 63 of those insurance companies managed $100 million or more in such accounts.

To estimate the impact of the proposed regulation on both the insurance industry as a whole and on individual companies within the industry, the ratio of funds in Transition Policies (as reported on Schedule A of the Form 5500 series) to an insurer's general account funds was computed. This is one of a number of reasonable measures of insurer net exposure that could have been chosen. For example, the ratio of funds in Transition Policies to insurer net worth would be another reasonable measure.

The ACLI reports that at year-end 1995, a total of $1.683 trillion was held in the general accounts of life insurance companies.[14] In order to estimate the total value of general account assets in the 104 companies which have issued Transition Policies with a total value of $25 million or more, data from the 1996 and 1998 editions of the Best Insurance Reports and Standard & Poor's Claims-Paying Ability Reports were used along with information provided by insurance representatives. For a few companies for which data were not available from the above two sources, telephone calls were made to the companies to obtain general account asset information. The general accounts of these 104 companies in 1995 were estimated to be $1.372 trillion. The $98 billion estimated as held to support Transition Policies by the 104 companies represent 7.1 percent of total general account assets.

The percentage of general account assets held to support Transition Policies varied widely among insurance companies, ranging from a low of 0.1 percent to a high of 44 percent. For 74 percent of the companies (77 companies), the assets held in support of Transition Policies made up less than 10 percent of total general account assets. For 13 percent of the companies (14 companies), assets held in support of Transition Policies made up from 10 to 19 percent of total general account assets, and for the remaining 13 percent (13 companies), assets in Transition Policies made up 20 percent or more of general account assets, with a maximum percentage of 44 percent.

The Department estimates that the proposed regulation will have a significant impact on the 13 companies in which assets held in Transition Policies (as reported on Schedule A of the Form 5500 series) exceed 20 percent of the insurer's general account assets. While any threshold measure of impact is, to some extent, arbitrary, we believe that the 20 percent level is a reasonable measure, given the estimated costs of bringing contracts into compliance and any increased exposure represented by required changes in policy termination provisions.

2. Costs of Compliance

Insurance industry representatives disagreed with the Department's estimate of the aggregate cost of compliance with the proposed regulation of no more than $2 to $5 million per year, indicating that they believe the costs will be a significant multiple of this estimate. However, these insurance industry representatives indicated that they did not have specific information as to the aggregate cost of compliance with the regulation. The representatives did not provide any analysis of the sources and methodologies used to derive their cost bases. Thus, the Department could not replicate these estimates.

The Department now estimates based on the cost estimates provided by 6 insurance companies and from Form 5500 series reports that the average annual aggregate costs over the first 10 years of compliance with the regulation to be approximately $37 million (initial costs plus the annual costs over 10 years divided by 10 years). This estimate includes initial costs to insurers for reviewing the language in current contracts concerning termination provision, drafting policy riders or amendments, and mailing new policies to policyholders of $1.7 million. The estimate also includes the initial cost to insurers of preparing the initial disclosure statement to give to employee benefit plans of $52.7 million and an annual cost for disclosure in subsequent years of $37 million. The basis for these estimates is provided in the Paperwork Reduction Act section of this preamble.

Disclosure Provisions

The Department received several comments regarding the disclosure provisions in the proposed regulation. In response to these comments, the disclosure provisions have been modified in the final regulation, thus clarifying the requirements and reducing any potential burdens associated with these provisions. For example, the Department limited the disclosure requirements to those items relevant to the policyholder's ability to withdraw or transfer funds under the policy. In addition, the Department eliminated the requirement that the insurer make available upon request of a plan copies of the documents supporting the actuarial opinion of the insurer's Appointed Actuary. The Department has determined that these changes have no significant impact on the costs associated with the regulation.

Termination Provisions

The proposed regulation included two forms of termination payment that would be available to transition policy holders—a lump sum payment with a market value adjustment and a book value payout, in essentially equal installments, over a period of no more than five years calculated using an interest rate of no less than 1 percent less than the rate currently crediting on the policy at the time of termination. The final regulation also includes the two forms of termination payment but, in response to comments received, lengthens the period for book value payouts to over no more than ten years and with a crediting rate of no more than 1 percent less than the current crediting rate. The Department based this change on a New York state insurance regulation. The New York regulation serves as the Department's model because most insurers of group annuity contracts are licensed to do business in New York. That regulation has applied since 1987 to insurers licensed to do business in New York. The New York regulation requires that unallocated group annuity contracts issued after 1987 provide that the policyholder can terminate the contract and receive either a lump sum payment with a market value adjustment or a

benefits) of the 1994 Form 5500 reports alone and did not make use of Schedule A data. The use of the Schedule A attachment in combination with data reported on the Form 5500 allows for a much more refined estimate to be developed, particularly for small plans which do not separately report assets held in insurance company general accounts.

[14] ''1996 Life Insurance Fact Book,'' American Council of Life Insurance, p. 89.

book value payout over no more than 10 years (including a 5 year payout option) with a crediting rate no less than 1.5 percent less than the current crediting rate.

For many group annuity contracts, the regulation will liberalize payout options that were previously available. For other contracts, it will create new payout options. These changes will have two principal effects: (1) In situations where contracts did not previously allow for a positive market value adjustment, they will increase payouts to some terminating group annuity policyholders, thus transferring value from insurance companies or their continuing policyholders to pension plans which terminate their arrangements, and (2) they will tend to change the investment policies for the assets supporting group annuity contracts because of the increased likelihood of early terminations of contracts, in particular shortening the maturity structure and shifting the asset mix toward a larger portion in marketable securities.

While the transfer of value in situations where contracts did not previously allow for a positive market value adjustment, may result in a loss to some insurance companies, at the level of the economy as a whole that effect will be offset by gains to some pension plans. The ultimate distributions of the burden and gain are difficult to determine. The gain may be realized by plan participants or shareholders of firms sponsoring pension plans and the loss borne by shareholders of insurance companies or by other purchasers of life insurance products. While any increase in an insurer's liabilities may increase the probability of a future insolvency, the Department is unable to quantify this effect. It believes, however, that those insurers for whom this regulation has the greatest impact will aggressively seek to lessen the effects on their financial structures by appropriate asset/liability matching techniques.

The decrease in insurers' group annuity liability duration is likely to trigger changes in the way insurers manage the assets supporting those contracts. That response is likely to take the form of shifting to assets that are less sensitive to interest rate changes (*i.e.*, assets with shorter durations). Life insurers will also likely shift their investments to assets with greater liquidity.

Many of the analyses supplied by the insurance industry in response to the proposed regulation assumed insurers would shorten their asset structure to correspond to the interest rate sensitivity of a 5 year payout of the book value of their Transition Policies. Under the final regulation, a similar analysis would imply that insurers will shorten their asset structure to correspond to the interest rate sensitivity of a 10 year payout of the book value. The 10 year option would imply a small shortening of insurers' liabilities and thus probably of their assets. The shortening of the duration of assets would imply, under most circumstances, a decrease in portfolio rates of return. The 10 year option would require a relatively small reduction in the duration of the group annuity portfolio for most insurance companies. Because the yield curve for bonds with respect to maturity is usually fairly flat in the relevant range of maturities, the difference in the rates of return associated with such restructuring is fairly small. Thus the decrease in the portfolio rates of the return would be generally far smaller than the industry estimates of 50 to 100 basis points that were derived based on the 5 year book value payout required by the proposed regulation.

Some commentators have argued that plans will terminate contracts to take advantage of the upward market adjustments or the difference in value between the two termination payout options. The Department believes that few such terminations will occur because other contractual features, such as guaranteed annuity purchase rates, also have value. In addition, long-established business relationships are valuable and Transition Policy contract holders will attempt to negotiate mutually beneficial agreements for continuing relationships.

Further, as indicated earlier, New York state insurance regulation requires for recently issued unallocated group annuity contracts issued by insurers licensed to do business in New York termination provisions similar to those of this regulation. Most of the major issuers of group annuity products are licensed to do business in New York. The Department notes that while there has been more than a decade of experience with the New York regulation, no written or oral testimony was submitted to indicate that experience with respect to termination of such contracts differs from that of other contracts with less favorable termination provisions.

Cure Provision

As described earlier in this preamble, the Department has added a cure provision to the final regulation in response to public comment. This cure provision would allow insurers that have made reasonable and good faith efforts to comply with the requirements of the regulation up to 60 days from either the date of the insurers' detection of the problem or the date of the receipt of written notice of non-compliance from the plan to comply with the requirements of the regulation. In addition, interest must be credited on any amounts due the policyholder on termination or discontinuance of the policy if not paid within 90 days of receipt of notice from the policyholder.

In order for an insurer to make use of the cure, it must have established written procedures that are reasonably designed to assure compliance and to detect instances of noncompliance. While the Department is unable to quantify the benefit of the cure provision, it is anticipated that the cure provision will allow insurers to avail themselves of the protections of the regulation with somewhat greater administrative flexibility. Although there may be certain expenses associated with the establishment of written compliance procedures, the Department believes that many insurers would implement such procedures as part of their usual management practices, and would satisfy the conditions for use of the cure only if the provision offered a net benefit to the insurer.

Indirect Costs

The indirect costs associated with the regulation are negative effects of the regulation on the functioning of capital markets. Some commentators have argued that the regulation will affect long-term lending and the availability of capital in the national economy. The discussion that follows provides details of the indirect costs associated with the regulation.

Effect on Long-Term Lending and the Availability of Capital in the National Economy

Several commentators have argued that a shortening of insurers' portfolios (reducing the investment duration of debt holdings) would reduce the overall amount and raise the price of long-term lending in the economy. They further assert that insurers are one of the major providers of long-term capital, and that if insurers choose in the future to invest more of their portfolios in shorter term debt securities, the effect could be a significant reduction in the amount of capital invested in long-term projects overall.

They support their premise by reporting that the total dollar figure of insurance industry investment in long-term corporate debt is $531 billion dollars as of year end 1996 ($885 billion invested in corporate debt of which 60

percent is long-term). This figure is minimal when considered in terms of the total long-term debt outstanding in the capital markets.

The Department disagrees with the commentators' above assessment of the impact of the insurance industry's investment in long-term securities. According to a recent Federal Reserve statistical release titled, ''Flow of Funds Accounts of the United States, Flows and Outstanding, Third Quarter 1998,'' life insurance and other insurance companies provide a relatively small proportion of total capital compared to other major participants in the economy. Of the $22.630 trillion Total Credit Market Debt [15] Outstanding at September 30, 1998, Life insurance and Other insurance companies holdings represented a total of $2.342 trillion, or 10.35 percent of the total market. While this report does not specify what percentage of the $2.3 trillion are in general account assets, nor break out the debt holdings by maturity, the general information does help to present a broad and balanced picture of the insurance industry's influence on the long term debt and private placement markets, when analyzed in conjunction with statistics available from other sources.

Regarding the potential effects on the availability of financing for small business entities and on the private placement markets, further comments are addressed in the Regulatory Flexibility Act section of this preamble.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA 95), 44 U.S.C. 3507(d)(2), and 5 CFR 1320.11(f) require Federal agencies to publish collections of information contained in final rules for the public in the **Federal Register**. Modifications have been made to the collection of information that appeared in the Notice of Proposed Rulemaking (NPRM). These modifications are in response to comments received to the NPRM and reflect the availability of more recent Form 5500 data. The basis for these modifications is described in detail in the Economic Analysis section of this preamble.

The Department of Labor submitted the information collection as modified to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507 (d) and OMB has approved the information collection request included in this final rule under control number 1210–0114.

Estimated Reporting and Recordkeeping Burden: The Department estimates that there are approximately 123,500 Transition Policies for private employer pension plans currently in effect. These policies have been issued by an estimated 104 different insurance companies. While the burden on the pension plans holding Transition Policies is expected to be minimal, the final regulation will impose costs in the following two areas on insurance companies which have issued Transition Policies:

(1) The regulation would require that policies provide that a policyholder must be able to terminate or discontinue a policy upon 90 days notice to an insurer. The policy must also offer the policyholder the option to select either a lump sum payment or a series of installments over a period of no more than ten years. Insurance companies that have policies not already in compliance with these requirements will incur costs in preparing riders or amending these policies and in providing copies of these riders or amendments to policyholders.

(2) The regulation would require that insurers disclose to each policyholder certain information, including the methods used by the insurer to allocate any income and expenses of the insurer's general account to the policy during the term of the policy and upon its termination. Disclosure would consist of an initial statement to the policyholder, either as part of the amended Transition Policy, or as a separate written document, and an annual statement to the policyholder as long as the Transition Policy is in effect. The direct cost of compliance will be borne by the 104 insurance companies estimated to have Transition Policies and is as follows:

1. Policy Statement

The insurance industry has indicated that the relevant contracts typically already permit the termination and withdrawal of plan assets. The final regulation will require they change any policies in which the language of the provision on the right of the policyholder to terminate the contract does not meet the minimum requirements of the regulation. Each insurance company affected is expected to develop a standard statement to be added to or to replace the existing termination provision in each contract. The Department estimates that a total of 40 person hours of professional time per insurance company will be required to review whether existing policy termination provisions meet the proposed requirements and, if not, to develop a standard termination statement. Total estimated time for all affected insurers would be 4,160 hours (104 insurers × 40 hrs.)

The Department assumes that one-half of all policies will require a statement on termination rights of the policyholder to be added in place of existing language. Insertion of the statement into each policy and the mailing to policyholders is estimated to require ½ hour per policy, or a total of 30,875 hours (61,750 policies × ½ hr.). We assume that the average of ½ hour per policy would be split evenly between professional and clerical staff.

For purposes of estimating total costs to insurers of reviewing the language in current contracts and drafting policy statements, the costs of professional staff time are estimated to be $75 per hour and the costs of clerical staff time are estimated to be $12 per hour. Costs are therefore estimated to be $312,000 (4,160 hrs. × $75) to develop a standard termination statement and $1.3 million (30,875 hrs. × $43.50 (average of the $75 per hour professional rate and the $12 per hour clerical rate)) to insert the statement into each contract and mail the contracts to policyholders. Mailing costs are estimated at $.50 per policy, or a total of $30,875 (61,750 policies × $.50). Total costs to insurers would be approximately $1.7 million.

2. Disclosure Statements

The documentation needed by each insurer for the disclosure material should currently exist, either as data prepared for other reporting requirements or as data needed for internal computations by the insurer to allocate income and expenses. However, the time needed by each insurer to collect and incorporate the data into disclosure packages is expected to vary widely among insurers. While only one standard disclosure statement will likely be needed for prototype contracts, data for some individualized contracts will have to be customized on a contract-by-contract basis. Insurers with a large number of individualized policies will require more time to prepare the disclosure material than insurers making use of prototype contracts for all or most of their policies. The time needed and costs to develop the initial and annual statements are therefore dependent upon both the total number of policies and the number of individualized policies.

In response to the Department's request for information regarding the costs and benefits of the proposed

[15] As Defined in Table L.1, Credit Market Debt includes these federal government securities: mortgage pool securities, U.S. government loans, and government-sponsored enterprise securities, and these private financial sector instruments: open market paper, corporate bonds, bank loans (not elsewhere classified), other loans and advances, and mortgages.

regulation, cost estimates to meet the proposed disclosure requirements were provided for 6 insurance companies. These cost estimates varied. Most of the estimates broke out the costs into three components: The costs of preparing the initial statements; the costs for system changes to facilitate the development of annual statements; and the ongoing costs of preparing the annual statements.

The data provided on total insurer costs, together with Department estimates from Form 5500 reports on the total number of policies for each of the 6 insurers providing the cost data, were used to estimate the average costs per policy of the disclosure statement. The estimates for providing the initial disclosure among the 6 insurers ranged from a low of $68 per policy to a high of $1,962 per policy. The average cost per policy was $427. The average of $427 per policy times the estimate of 123,500 policies yields an estimated total cost for the initial disclosure statement of $52.7 million. This amounts to .05 percent of the total asset value of the policies.

Ongoing cost estimates for the annual disclosure statements ranged from a low of $21 per policy to a high of $1,226 per policy. This reflects both the direct annual costs estimated for the disclosure statements and the estimate for the costs of system changes, amortized over a 10-year period. The average annual cost for the 6 companies was $283 per policy. Total annual costs would be $35 million. (This annual cost estimate assumes that no policies are terminated.)

The combined costs for the policy statements and the disclosure statements are estimated to be $54.4 million in the initial year following adoption of the regulation and $35 million in each succeeding year.

The cost data provided by the six insurance companies did not include any estimates of the hourly burden involved in preparing the disclosure statements. The Department assumes that the preparation of the statements will require professional staff time. Based on an average of $75 per professional staff hour, the total hour estimate for preparing the initial disclosure statement will be 702,667 hours ($52.7 million/$75 per hour). Total estimated combined hours for the policy statements and disclosure statement in the initial year will be 737,702 hours (35,035 hours for policy statements plus 702,667 hours for disclosure statements). Total estimated hours in each subsequent year for the annual disclosure statement would be 466,667 hours ($35 million/$75).

Representatives of the insurance industry indicated that based on a survey of 14 member companies, the cost per company of creating the initial disclosure information would be $7,600,000. However, unlike the estimates of the six insurance companies, the basis for this estimate was not disclosed. Therefore the Department was unable to factor this estimate into its calculations.

The Department appreciates the comment informing us that contracts may be customized and that our earlier estimates did not take into account this customization. However, the Department disagrees with commentators' contention that our estimates did not account for the costs of preparation and distribution of standardized disclosure forms. More accurately, the Department's current estimate reflects the fact that some contracts allow for standardized disclosure and others must be customized on a contract-by-contract basis. In addition, the current analysis takes into consideration the Department's modifications to the disclosure requirements outlined earlier.

Respondents to these new information collection requirements are not required to respond unless this collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a final rule is likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

PWBA has conducted a final regulatory flexibility analysis which is summarized below.

(1) PWBA is promulgating this regulation because it is required to do so under section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104–188).

(2) The objective of the regulation is to provide guidance on the application of ERISA to policies held in insurance company general accounts. The legal basis for the regulation is found in ERISA section 401(c); an extensive list of authorities may be found in the Statutory Authority section, below.

(3) The direct cost of compliance will be borne by insurance companies. As noted in the proposed regulation, the Department estimates that no ''small'' insurance companies (as defined by the Small Business Administration at 61 FR 3280, January 31, 1996) offer the types of policies regulated here. The Department received no comments to the proposed regulation disagreeing with this conclusion. In addition, no small governmental jurisdictions, as defined in 5 U.S.C. section 601, will be affected.

With respect to employee benefit plans, the results of this analysis remain valid regardless of whether one uses the most applicable definition found in the regulations issued by the Small Business Administration (13 CFR section 121.201) or one defines small entity on the basis of section 104(a)(2) of ERISA as a plan with fewer than 100 participants. All employee benefit plans that purchased the regulated policies will receive the benefit of the enhanced disclosure provided by the regulation. Some of the costs of the disclosure may be passed on to the plans by the insurers. However, assuming that all disclosure costs are passed on to plans by the insurers, the Department estimates that these costs would be on average $441 per policy for providing initial disclosures (including the cost of amending policies) and $283 per policy for annual disclosures. This estimate assumes an equal distribution of the costs to all plans, both large and small.

A few commentators expressed concern that the start-up costs associated with disclosure requirements can be significant to a small plan. For example, one commentator indicated that the Department's original estimate of $100 to $200 per contract ignores the amortization of costs associated with the initial development of reporting capabilities. They argued that, for example, their firm services several plans with general account balances of $10,000 or less. They argue therefore, that if the annual disclosure cost is $150, this amounts to 1.5 percent of assets annually for a $10,000 contract; whereas for a $50,000 contract the cost would be 0.3 percent annually. The result will be that insurers that are forced to incur these costs will ultimately pass them on to the plan sponsor, and that for a small plan these costs are unaffordable. This assumes that insurers will pass on their aggregate

costs for compliance with the regulation by charging each plan the same dollar amount per contract, regardless of the size or nature of the contract or contracts involved, rather than a different method which may comport with the insurer's business plan.

While insurance companies may pass along costs to plan sponsors, the Department believes that such costs will be passed on, if at all, on the basis of the cost of compliance with respect to a particular contract or type of contract. In this regard, the Department believes that the cost of compliance will be low for the types of policies most commonly held by small plans. Compliance cost estimates we received from insurance companies varied widely. The cost estimates, along with comments received from industry representatives, indicate a particular concern about high costs in the case of individualized policies which may require customized amendments and disclosure statements. Individualized policies generally appear to be limited to older contracts which tend to have large dollar values (generally $5 million or more) and are held by larger, long-established plans. These contracts are the result of numerous amendments of the original contract forms which are no longer issued. Except for large value contracts, more recent contracts are prototypes rather than individually drafted. These prototype policies are more cost effective for contracts with smaller dollar values. For example, of the estimated 100,000 policies issued to plans with fewer than 100 participants, the average value in 1995 was $240,000. The Department understands that most small plans are likely to hold prototype contracts. This is because prototype polices are more cost effective than individualized policies for contracts with small dollar values. For example, of the 123,000 Transition Polices issued to all plans, an estimated 100,000 policies were issued to plans with fewer than 100 participants. The average value of such policies in 1995 was only $240,000. An estimated 17,000 policies were issued to plans with between 100 and 500 participants. The average value in 1995 was $1.8 million. For the remaining 6,000 plans, which had more than 500 participants, the average value was $7.2 million. The average contract value for all policies is only $800,000. It is evident that only a few (less than 5%) of plans holding Transition Policies are likely to hold individualized policies and these are the largest plans.

For each type of prototype policy only a single standard amendment to bring policies into compliance with the termination requirements of the regulation (for policies not already in compliance) and a single standard disclosure statement need be developed. The cost of the disclosure statement and any needed rider or amendment can be spread across a large number of contracts, thus minimizing the cost per contract of compliance. These costs, even if passed on to the plan sponsors by the insurers, are expected to be a minimal percentage of the asset value of the contracts.

As noted in the initial regulatory flexibility analysis of the proposed regulation, no significant alternatives which would minimize the impact on small entities have been identified. Although the Department considered whether it would be appropriate to reduce the costs that might be passed on to small plans by providing fewer disclosures or termination rights for small plans than is provided by large plans, such an approach was not adopted. The nature of the protective provisions is such that it would make little sense to provide a lower level of protections to contracts held by small plans in an effort to minimize the cost impact to those plans. The policies involved, although of lesser total value than policies issued to large plans, often represent a significant proportion of the assets of the plans that hold them. They also guarantee all or most of the benefits of the participants whose pensions they cover. Finally, thee fiduciaries of small plans may be less knowledgeable of insurance products and may have less bargaining power in dealing with insurers. Therefore, the protections in the regulation may be more important to the participants of small plans than to those of large plans. No comments received by the Department suggested that the regulation should provide small plans a lower level of protections than large plans.

In addition, no alternatives were identified by the commentators or have otherwise come to the attention of the Department. As discussed previously, in response to comments received, the Department made several modifications to the requirements of the proposed regulation. These modifications include relaxation of the disclosure requirements, an increase in the book value payout period in the termination provisions from 5 years to 10 years, and the introduction of the ''cure'' provision. These modifications are designed to minimize the impact of the regulation on small and large entities alike, consistent with the objectives of the requirements of the Small Business Job Protection Act of 1996 and ERISA. It would be inconsistent with these statutory requirements to create an alternative with lower compliance criteria, or an exemption from the regulation, for small plans because these are the entities that have the greatest need for the disclosure and other protections afforded by the regulation.

(4) The Department received one comment from representatives of the insurance industry regarding the initial regulatory flexibility analysis in the proposed regulation. They stated that the regulation will have collateral and potentially serious adverse effect on small businesses. In addition, they argue that the regulation, as proposed, will create a preferred class of policyholders and hurt the participants and beneficiaries of a large number of small plans that purchase insurance arrangements backed by insurance company general accounts. They further state that the termination requirements would seriously restrict an important source of capital for small businesses.

As described in the Economic Analysis section of this preamble, the termination requirements may result in transfer of value from some insurance companies or their continuing policyholders to pension plans that terminate their arrangements in situations where contracts otherwise did not previously allow for positive market value adjustments. However, despite the assertion by insurance industry representatives that this will adversely affect participants and beneficiaries in a large number of small plans, no statistical evidence has been provided to substantiate this claim. The Department finds no reason to assume, for example, that small plans would be less likely than large plans to terminate these contracts and thus suffer the adverse impact (if any) of transfers to the terminating policyholders.

(5) Several commentators have stated, without any supporting analysis, not only that the insurance industry is an important provider of long-term capital, but also that small and medium sized businesses rely heavily on insurance companies as a source of long-term credit. The Department disagrees with the above statements, based on its analysis of several prominent sources of data regarding small business financing [16]; its findings are summarized below.

[16] The studies analyzed include the Federal Reserve Board's, ''Report to the Congress of Availability of Credit to Small Businesses,'' issued in October 1997; ''New Information on Lending to Small Businesses and Small Farms: the 1996 CAR Data,'' published in the Federal Reserve Bulletin in January 1998; and ''Bank and Nonbank Competition for Small Business Credit: Evidence from the 1987 and 1993 National Surveys of Small Business

Continued

The Federal Reserve Board's 1997 ''Report to the Congress on the Availability of Credit to Small Business,'' indicates that small business credit needs continue to be met primarily by commercial banks. The report also documents that business debt growth has risen steadily since 1993, at an average rate of 5 percent, and that the increasing credit demands of small companies seem to have been easily accommodated by financial intermediaries and in the capital markets overall.

Assuming the insurance industry's supply of long-term lending is somewhat less than their 10 percent participation in the credit market overall, it appears from these recent debt growth trends that other financial institutions and suppliers of capital would be able to fill any gap left by an insurance retrenchment in long-term lending/investment.

The Federal Reserve Board's 1998 report, ''New Information on Lending to Small Businesses and Small Farms: the 1996 CAR Data,'' indicates that a vast majority of the reported small business loans were either originated or purchased by commercial banks or their affiliates. As of year-end 1996, of the total dollar amount of $146.98 billion loaned, commercial banks originated or purchased 95.6 percent, or $140.5 billion. Other institutions originated the remaining 4.4 percent.

The Federal Reserve Board's 1996 study, ''Bank and Nonbank Competition for Small Business Credit: Evidence from the 1987 and 1993 National Surveys of Small Business Finances,'' reported on the competition for small business credit, and the sources of credit used by small firms, including credit lines, mortgage loans, equipment loans, motor vehicle loans, and ''other'' loans.[17] The survey reports that as of 1993, insurance and mortgage companies together provided a 1.9 percent dollar share of the outstanding credit lent to small businesses by nonbank institutions (nonbanks provided 38.7 percent of all outstanding credit, versus 61.3 percent provided by banks).

In sum, the Department believes that the statistics included in the above-discussed Federal Reserve reports and surveys point to the conclusion that commercial banks are the major supplier of credit financing to small businesses. The reports further show that the insurance industry's participation is not large in the long-term credit markets overall, nor is the insurance industry a large provider of financing for small to medium-sized firms. Therefore, we do not believe an insurance industry retrenchment from longer term debt investing will adversely affect capital investments or small business financing.

Several commentators stated that not only are insurers a major source of long-term lending, but further posited that if insurers retrenched from the long-term debt market, the results would be a decrease in the amount of capital allocated to long-term projects, which in turn could have a detrimental impact on the private placement markets, which predominantly serve small and medium-sized businesses. Ultimately, this would have a negative effect on the availability of financing for small businesses. One commentator in the investment banking field supported this argument by stating that of the $20 billion total the commentator placed in private securities in 1997, life insurance companies bought 80 percent, or $16 billion of the offerings.

This statistic does not present a full picture of the private placement market, nor does it shed any light about the magnitude, influence or significance of insurers' participation in the market. It further does not provide any pertinent information about small business' dependence on or utilization of this source of capital.

The Department has found significant evidence to refute the commentators' above concerns. A study conducted specifically on the private placement markets, published in August, 1998[18] gives an overview of the nature of the private equity and debt markets[19] in which small businesses are financed.

This study reports data on the distribution of private financing for U.S. small businesses. Generally, it shows that within the private placement markets, small firms depend on both private equity (49.6 percent) and private debt (50.4 percent).

The largest source of private equity financing is the ''principal owner'' (typically the person who has the largest ownership share and has the primary authority to make financial decisions) at 31.3 percent of the total market, which represents 66 percent of total private equity. The next biggest equity category is ''other equity'' at 12.86 percent, which includes members of the start-up team other than the owner, family and friends. ''Angel finance'' accounts for an estimated 3.59 percent. (''Angels'' are high net worth individuals who provide direct funding to early-stage new businesses). Venture capital provides 1.86 percent of small business private equity financing.

There are nine categories of debt which are divided into three categories of funding that are provided by financial institutions—commercial banks providing 18.75 percent of total finance, finance companies 4.91 percent and other financial institutions[20] 3.00 percent; the six other categories funded by nonfinancial and government sources make up the remainder of private debt funding.

In summary, insurance companies at most may provide some portion of the 1.86 percent in small business equity financing funded by the venture capital sector. Alternatively, they at most may provide some portion of the 3% funded by ''other'' financial institutions to the small business private debt market, which includes 4 other types of institutional investors.

The Department believes that these figures clearly show the commentators' concerns about the regulation's effect on the private placement market, and ultimately, small business financing, to be unfounded.

Small Business Regulatory Enforcement Fairness Act

The final rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA) and has been transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this final rule does not include any Federal mandate that may result in the expenditure by state, local and tribal governments in the aggregate, or by the private sector, of $100,000,000 or more in any one year.

Statutory Authority

The regulation set forth herein is issued pursuant to the authority contained in sections 401(c) and 505 of ERISA (Pub. L. 93–406, Pub. L. 104–188,

Finances,'' published in the Federal Reserve Bulletin in November 1996.

[17] ''Other'' loans refer to loans not elsewhere classified, primarily unsecured term loans and loans collateralized by assets other than real estate, equipment loans, motor vehicles and loans not taken down under credit lines.

[18] ''The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle,'' Journal of Banking and Finance, Volume 22.

[19] Private equity and debt are also referred to as private placements, and make up the private placement market.

[20] ''Other'' financial institutions include thrift institutions, leasing companies, brokerage firms, mortgage companies and insurance companies.

88 Stat. 894; 29 U.S.C. 1101(c), 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–87, 52 FR 13139 (April 21, 1987).

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Insurance Companies, Investments, Investment foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

For the reasons discussed in the preamble, 29 CFR Part 2550 is amended as follows:

PART 2550—[AMENDED]

1. The authority for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135. Section 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp., p. 332. Section 2550.401c–1 also issued under 29 U.S.C. 1101. Section 2550.404c–1 also issued under 29 U.S.C. 1104. Section 2550.407c–3 also issued under 29 U.S.C. 1107. Section 2550.408b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp., p. 332, and 29 U.S.C. 1108(b)(1). Section 2550.412–1 also issued under 29 U.S.C. 1112. Secretary of Labor's Order No. 1–87 (52 FR 13139).

2. New § 2550.401c–1 is added to read as follows:

§ 2550.401c–1 Definition of ''plan assets''—insurance company general accounts.

(a) *In general.* (1) This section describes, in the case where an insurer issues one or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of an insurance company's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute plan assets for purposes of Subtitle A, and Parts 1 and 4 of Subtitle B, of Title I of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975 of the Internal Revenue Code (the Code), and provides guidance with respect to the application of Title I of the Act and section 4975 of the Code to the general account assets of insurers.

(2) Generally, when a plan has acquired a Transition Policy (as defined in paragraph (h)(6) of this section), the plan's assets include the Transition Policy, but do not include any of the underlying assets of the insurer's general account if the insurer satisfies the requirements of paragraphs (c) through (f) of this section or, if the requirements of paragraphs (c) through (f) were not satisfied, the insurer cures the non-compliance through satisfaction of the requirements in paragraph (i)(5) of this section.

(3) For purposes of paragraph (a)(2) of this section, a plan's assets will not include any of the underlying assets of the insurer's general account if the insurer fails to satisfy the requirements of paragraphs (c) through (f) of this section solely because of the takeover of the insurer's operations from management as a result of the granting of a petition filed in delinquency proceedings in the State court where the insurer is domiciled.

(b) *Approval by fiduciary independent of the issuer.* (1) *In general.* An independent plan fiduciary who has the authority to manage and control the assets of the plan must expressly authorize the acquisition or purchase of the Transition Policy. For purposes of this paragraph, a fiduciary is not independent if the fiduciary is an affiliate of the insurer issuing the policy.

(2) Notwithstanding paragraph (b)(1) of this section, the authorization by an independent plan fiduciary is not required if:

(i) The insurer is the employer maintaining the plan, or a party in interest which is wholly owned by the employer maintaining the plan; and

(ii) The requirements of section 408(b)(5) of the Act are met.[1]

(c) *Duty of disclosure.* (1) *In general.* An insurer shall furnish the information described in paragraphs (c)(3) and (c)(4) of this section to a plan fiduciary acting on behalf of a plan to which a Transition Policy has been issued. Paragraph (c)(2) of this section describes the style and format of such disclosure. Paragraph (c)(3) of this section describes the content of the initial disclosure. Paragraph (c)(4) of this section describes the information that must be disclosed by the insurer at least once per year for as long as the Transition Policy remains outstanding.

(2) *Style and format.* The disclosure required by this paragraph should be clear and concise and written in a manner calculated to be understood by a plan fiduciary, without relinquishing any of the substantive detail required by paragraphs (c)(3) and (c)(4) of this section. The information does not have to be organized in any particular order but should be presented in a manner which makes it easy to understand the operation of the Transition Policy.

(3) *Initial disclosure.* The insurer must provide to the plan, either as part of an amended policy, or as a separate written document, the disclosure information set forth in paragraphs (c)(3)(i) through (iv) of this section. The disclosure must include all of the following information which is applicable to the Transition Policy:

(i) A description of the method by which any income and any expense of the insurer's general account are allocated to the policy during the term of the policy and upon its termination, including:

(A) A description of the method used by the insurer to determine the fees, charges, expenses or other amounts that are, or may be, assessed against the policyholder or deducted by the insurer from any accumulation fund under the policy, including the extent and frequency with which such fees, charges, expenses or other amounts may be modified by the insurance company;

(B) A description of the method by which the insurer determines the return to be credited to any accumulation fund under the policy, including a description of the method used to allocate income and expenses to lines of business, business segments, and policies within such lines of business and business segments, and a description of how any withdrawals, transfers, or payments will affect the amount of the return credited;

(C) A description of the rights which the policyholder or plan participants have to withdraw or transfer all or a portion of any accumulation fund under the policy, or to apply the amount of a withdrawal to the purchase of guaranteed benefits or to the payment of benefits, and the terms on which such withdrawals or other applications of funds may be made, including a description of any charges, fees, credits, market value adjustments, or any other charges or adjustments, both positive and negative;

(D) A statement of the method used to calculate any charges, fees, credits or market value adjustments described in paragraph (c)(3)(i)(C) of this section, and, upon the request of a plan fiduciary, the insurer must provide within 30 days of the request:

(*1*) The formula actually used to calculate the market value adjustment, if any, to be applied to the unallocated

[1] The Department notes that, because section 401(c)(1)(D) of the Act and the definition of Transition Policy preclude the issuance of any additional Transition Policies after December 31, 1998, the requirement for independent fiduciary authorization of the acquisition or purchase of the Transition Policy in paragraph (b) no longer has any application.

amount in the accumulation fund upon distribution of a lump sum payment to the policyholder, and

(*2*) The actual calculation, as of a specified date that is no earlier than the last contract anniversary preceding the date of the request, of the applicable market value adjustment, including a description of the specific variables used in the calculation, the value of each of the variables, and a general description of how the value of each of those variables was determined.

(*3*) If the formula is based on interest rate guarantees applicable to new contracts of the same class or classes, and the duration of the assets underlying the accumulation fund, the contract must describe the process by which those components are ascertained or obtained. If the formula is based on an interest rate implicit in an index of publicly traded obligations, the identity of the index, the manner in which it is used, and identification of the source or publication where any data used in the formula can be found, must be disclosed;

(ii) A statement describing the expense, income and benefit guarantees under the policy, including a description of the length of such guarantees, and of the insurer's right, if any, to modify or eliminate such guarantees;

(iii) A description of the rights of the parties to make or discontinue contributions under the policy, and of any restrictions (such as timing, minimum or maximum amounts, and penalties and grace periods for late payments) on the making of contributions under the policy, and the consequences of the discontinuance of contributions under the policy; and

(iv) A statement of how any policyholder or participant-initiated withdrawals are to be made: first-in, first-out (FIFO) basis, last-in, first-out (LIFO) basis, pro rata or another basis.

(4) *Annual disclosure.* At least annually and not later than 90 days following the period to which it relates, an insurer shall provide the following information to each plan to which a Transition Policy has been issued:

(i) The balance of any accumulation fund on the first day and last day of the period covered by the annual report;

(ii) Any deposits made to the accumulation fund during such annual period;

(iii) An itemized statement of all income attributed to the policy or added to the accumulation fund during the period, and a description of the method used by the insurer to determine the precise amount of income;

(iv) The actual rate of return credited to the accumulation fund under the policy during such period, stating whether the rate of return was calculated before or after deduction of expenses charged to the accumulation fund;

(v) Any other additions to the accumulation fund during such period;

(vi) An itemized statement of all fees, charges, expenses or other amounts assessed against the policy or deducted from the accumulation fund during the reporting year, and a description of the method used by the insurer to determine the precise amount of the fees, charges and other expenses;

(vii) An itemized statement of all benefits paid, including annuity purchases, to participants and beneficiaries from the accumulation fund;

(viii) The dates on which the additions or subtractions were credited to, or deducted from, the accumulation fund during such period;

(ix) A description, if applicable, of all transactions with affiliates which exceed 1 percent of group annuity reserves of the general account for the prior reporting year;

(x) A statement describing any expense, income and benefit guarantees under the policy, including a description of the length of such guarantees, and of the insurer's right, if any, to modify or eliminate such guarantees. However, the information on guarantees does not have to be provided annually if it was previously disclosed in the insurance policy and has not been modified since that time;

(xi) A good faith estimate of the amount that would be payable in a lump sum at the end of such period pursuant to the request of a policyholder for payment or transfer of amounts in the accumulation fund under the policy after the insurer deducts any applicable charges and makes any appropriate market value adjustments, upward or downward, under the terms of the policy. However, upon the request of a plan fiduciary, the insurer must provide within 30 days of the request the information contained in paragraph (c)(3)(i)(D) as of a specified date that is no earlier than the last contract anniversary preceding the date of the request; and

(xii) An explanation that the insurer will make available promptly upon request of a plan, copies of the following publicly available financial data or other publicly available reports relating to the financial condition of the insurer:

(A) National Association of Insurance Commissioners Statutory Annual Statement, with Exhibits, General Interrogatories, and Schedule D, Part 1A, Sections 1 and 2 and Schedule S—Part 3E;

(B) Rating agency reports on the financial strength and claims-paying ability of the insurer;

(C) Risk adjusted capital ratio, with a brief description of its derivation and significance, referring to the risk characteristics of both the assets and the liabilities of the insurer;

(D) Actuarial opinion of the insurer's Appointed Actuary certifying the adequacy of the insurer's reserves as required by New York State Insurance Department Regulation 126 and comparable regulations of other States; and

(E) The insurer's most recent SEC Form 10K and Form 10Q (stock companies only).

(d) *Alternative separate account arrangements.* (1) *In general.* An insurer must provide the plan fiduciary with the following additional information at the same time as the initial disclosure required under paragraph (c)(3) of this section:

(i) A statement explaining the extent to which alternative contract arrangements supported by assets of separate accounts of insurers are available to plans;

(ii) A statement as to whether there is a right under the policy to transfer funds to a separate account and the terms governing any such right; and

(iii) A statement explaining the extent to which general account contracts and separate account contracts of the insurer may pose differing risks to the plan.

(2) An insurer will be deemed to comply with the requirements of paragraph (d)(1)(iii) of this section if the disclosure provided to the plan includes the following statement:

a. Contractual arrangements supported by assets of separate accounts may pose differing risks to plans from contractual arrangements supported by assets of general accounts. Under a general account contract, the plan's contributions or premiums are placed in the insurer's general account and commingled with the insurer's corporate funds and assets (excluding separate accounts and special deposit funds). The insurance company combines in its general account premiums received from all of its lines of business. These premiums are pooled and invested by the insurer. General account assets in the aggregate support the insurer's obligations under all of its insurance contracts, including (but not limited to) its individual and group life, health, disability, and annuity contracts. Experience rated general account policies may share in the experience of the general account through interest credits, dividends, or rate adjustments, but assets in the general account are not segregated for the exclusive benefit of any particular policy or obligation. General

account assets are also available to the insurer for the conduct of its routine business activities, such as the payment of salaries, rent, other ordinary business expenses and dividends.

b. An insurance company separate account is a segregated fund which is not commingled with the insurer's general assets. Depending on the particular terms of the separate account contract, income, expenses, gains and losses associated with the assets allocated to a separate account may be credited to or charged against the separate account without regard to other income, expenses, gains, or losses of the insurance company, and the investment results passed through directly to the policyholders. While most, if not all, general account investments are maintained at book value, separate account investments are normally maintained at market value, which can fluctuate according to market conditions. In large measure, the risks associated with a separate account contract depend on the particular assets in the separate account.

c. The plan's legal rights vary under general and separate account contracts. In general, an insurer is subject to ERISA's fiduciary responsibility provisions with respect to the assets of a separate account (other than a separate account registered under the Investment Company Act of 1940) to the extent that the investment performance of such assets is passed directly through to the plan policyholders. ERISA requires insurers, in administering separate account assets, to act solely in the interest of the plan's participants and beneficiaries; prohibits self-dealing and conflicts of interest; and requires insurers to adhere to a prudent standard of care. In contrast, ERISA generally imposes less stringent standards in the administration of general account contracts which were issued on or before December 31, 1998.

d. On the other hand, State insurance regulation is typically more restrictive with respect to general accounts than separate accounts. However, State insurance regulation may not provide the same level of protection to plan policyholders as ERISA regulation. In addition, insurance company general account policies often include various guarantees under which the insurer assumes risks relating to the funding and distribution of benefits. Insurers do not usually provide any guarantees with respect to the investment returns on assets held in separate accounts. Of course, the extent of any guarantees from any general account or separate account contract will depend upon the specific policy terms.

e. Finally, separate accounts and general accounts pose differing risks in the event of the insurer's insolvency. In the event of insolvency, funds in the general account are available to meet the claims of the insurer's general creditors, after payment of amounts due under certain priority claims, including amounts owed to its policyholders. Funds held in a separate account as reserves for its policy obligations, however, may be protected from the claims of creditors other than the policyholders participating in the separate account. Whether separate account funds will be granted this protection will depend upon the terms of the applicable policies and the provisions of any applicable laws in effect at the time of insolvency.

(e) *Termination procedures.* Within 90 days of written notice by a policyholder to an insurer, the insurer must permit the policyholder to exercise the right to terminate or discontinue the policy and to elect to receive without penalty either:

(1) A lump sum payment representing all unallocated amounts in the accumulation fund. For purposes of this paragraph (e)(1), the term penalty does not include a market value adjustment (as defined in paragraph (h)(7)of this section) or the recovery of costs actually incurred which would have been recovered by the insurer but for the termination or discontinuance of the policy, including any unliquidated acquisition expenses, to the extent not previously recovered by the insurer; or

(2) A book value payment of all unallocated amounts in the accumulation fund under the policy in approximately equal annual installments, over a period of no longer than 10 years, together with interest computed at an annual rate which is no less than the annual rate which was credited to the accumulation fund under the policy as of the date of the contract termination or discontinuance, minus 1 percentage point. Notwithstanding paragraphs (e)(1) and (e)(2) of this section, the insurer may defer, for a period not to exceed 180 days, amounts required to be paid to a policyholder under this paragraph for any period of time during which regular banking activities are suspended by State or federal authorities, a national securities exchange is closed for trading (except for normal holiday closings), or the Securities and Exchange Commission has determined that a state of emergency exists which may make such determination and payment impractical.

(f) *Insurer-initiated amendments.* In the event the insurer makes an insurer-initiated amendment (as defined in paragraph (h)(8) of this section), the insurer must provide written notice to the plan at least 60 days prior to the effective date of the insurer-initiated amendment. The notice must contain a complete description of the amendment and must inform the plan of its right to terminate or discontinue the policy and withdraw all unallocated funds without penalty by sending a written request within such 60 day period to the name and address contained in the notice. The plan must be offered the election to receive either a lump sum or an installment payment as described in paragraph (e)(1) and (e)(2) of this section. An insurer-initiated amendment shall not apply to a contract if the plan fiduciary exercises its right to terminate or discontinue the contract within such 60 day period and to receive a lump sum or installment payment.

(g) *Prudence.* An insurer shall manage those assets of the insurer which are assets of such insurer's general account (irrespective of whether any such assets are plan assets) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, taking into account all obligations supported by such enterprise. This prudence standard applies to the conduct of all insurers with respect to policies issued to plans on or before December 31, 1998, and differs from the prudence standard set forth in section 404(a)(1)(B) of the Act. Under the prudence standard provided in this paragraph, prudence must be determined by reference to all of the obligations supported by the general account, not just the obligations owed to plan policyholders. The more stringent standard of prudence set forth in section 404(a)(1)(B) of the Act continues to apply to any obligations which insurers may have as fiduciaries which do not arise from the management of general account assets, as well as to insurers' management of plan assets maintained in separate accounts. The terms of this section do not modify or reduce the fiduciary obligations applicable to insurers in connection with policies issued after December 31, 1998, which are supported by general account assets, including the standard of prudence under section 404(a)(1)(B) of the Act.

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

(1) An *affiliate* of an insurer means:

(i) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the insurer,

(ii) Any officer of, director of, 5 percent or more partner in, or highly compensated employee (earning 5 percent or more of the yearly wages of the insurer) of, such insurer or of any person described in paragraph (h)(1)(i) of this section including in the case of an insurer, an insurance agent or broker thereof (whether or not such person is a common law employee) if such agent or broker is an employee described in this paragraph or if the gross income received by such agent or broker from such insurer exceeds 5 percent of such agent's gross income from all sources for the year, and

(iii) Any corporation, partnership, or unincorporated enterprise of which a person described in paragraph (h)(1)(ii) of this section is an officer, director, or a 5 percent or more partner.

(2) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(3) The term *guaranteed benefit policy* means a policy described in section 401(b)(2)(B) of the Act and any regulations promulgated thereunder.

(4) The term *insurer* means an insurer as described in section 401(b)(2)(A) of the Act.

(5) The term *accumulation fund* means the aggregate net considerations (*i.e.*, gross considerations less all deductions from such considerations) credited to the Transition Policy plus all additional amounts, including interest and dividends, credited to such Transition Policy less partial withdrawals, benefit payments and less all charges and fees imposed against this accumulated amount under the Transition Policy other than surrender charges and market value adjustments.

(6) The term *Transition Policy* means:

(i) A policy or contract of insurance (other than a guaranteed benefit policy) that is issued by an insurer to, or on behalf of, an employee benefit plan on or before December 31, 1998, and which is supported by the assets of the insurer's general account.

(ii) A policy will not fail to be a Transition Policy merely because the policy is amended or modified:

(A) To comply with the requirements of section 401(c) of the Act and this section; or

(B) Pursuant to a merger, acquisition, demutualization, conversion, or reorganization authorized by applicable State law, provided that the premiums, policy guarantees, and the other terms and conditions of the policy remain the same, except that a membership interest in a mutual insurance company may be eliminated from the policy in exchange for separate consideration (*e.g.*, shares of stock or policy credits).

(7) For purposes of this section, the term *market value adjustment* means an adjustment to the book value of the accumulation fund to accurately reflect the effect on the value of the accumulation fund of its liquidation in the prevailing market for fixed income obligations, taking into account the future cash flows that were anticipated under the policy. An adjustment is a *market value adjustment* within the meaning of this definition only if the insurer has determined the amount of the adjustment pursuant to a method which was previously disclosed to the policyholder in accordance with paragraph (c)(3)(i)(D) of this section, and the method permits both upward and downward adjustments to the book value of the accumulation fund.

(8) The term *insurer-initiated amendment* is defined in paragraphs (h)(8)(i), (ii) and (iii) of this section as:

(i) An amendment to a Transition Policy made by an insurer pursuant to a unilateral right to amend the policy terms that would have a material adverse effect on the policyholder; or

(ii) Any of the following unilateral changes in the insurer's conduct or practices with respect to the policyholder or the accumulation fund under the policy that result in a material reduction of existing or future benefits under the policy, a material reduction in the value of the policy or a material increase in the cost of financing the plan or plan benefits:

(A) A change in the methodology for assessing fees, expenses, or other charges against the accumulation fund or the policyholder;

(B) A change in the methodology used for allocating income between lines of business, or product classes within a line of business;

(C) A change in the methodology used for determining the rate of return to be credited to the accumulation fund under the policy;

(D) A change in the methodology used for determining the amount of any fees, charges, expenses, or market value adjustments applicable to the accumulation fund under the policy in connection with the termination of the contract or withdrawal from the accumulation fund;

(E) A change in the dividend class to which the policy or contract is assigned;

(F) A change in the policyholder's rights in connection with the termination of the policy, withdrawal of funds or the purchase of annuities for plan participants; and

(G) A change in the annuity purchase rates guaranteed under the terms of the contract or policy, unless the new rates are more favorable for the policyholder.

(iii) For purposes of this definition, an insurer-initiated amendment is material if a prudent fiduciary could reasonably conclude that the amendment should be considered in determining how or whether to exercise any rights with respect to the policy, including termination rights.

(iv) For purposes of this definition, the following amendments or changes are not insurer-initiated amendments:

(A) Any amendment or change which is made with the affirmative consent of the policyholder;

(B) Any amendment or change which is made in order to comply with the requirements of section 401(c) of the Act and this section; or

(C) Any amendment or change which is made pursuant to a merger, acquisition, demutualization, conversion, or reorganization authorized by applicable State law, provided that the premiums, policy guarantees, and the other terms and conditions of the policy remain the same, except that a membership interest in a mutual insurance company may be eliminated from the policy in exchange for separate consideration (*e.g.*, shares of stock or policy credits).

(i) *Limitation on liability.* (1) No person shall be subject to liability under Parts 1 and 4 of Title I of the Act or section 4975 of the Internal Revenue Code of 1986 for conduct which occurred prior to the applicability dates of the regulation on the basis of a claim that the assets of an insurer (other than plan assets held in a separate account) constitute plan assets. Notwithstanding the provisions of this paragraph (i)(1), this section shall not:

(i) Apply to an action brought by the Secretary of Labor pursuant to paragraphs (2) or (5) of section 502(a) of ERISA for a breach of fiduciary responsibility which would also constitute a violation of Federal or State criminal law;

(ii) Preclude the application of any Federal criminal law; or

(iii) Apply to any civil action commenced before November 7, 1995.

(2) Nothing in this section relieves any person from any State law regulating insurance which imposes additional obligations or duties upon insurers to the extent not inconsistent with the provisions of this section. Therefore, nothing in this section should be construed to preclude a State from requiring insurers to make additional disclosures to policyholders, including plans. Nor does this section prohibit a State from imposing additional substantive requirements with respect to the management of general accounts or from otherwise regulating the relationship between the policyholder and the insurer to the extent not inconsistent with the provisions of this section.

(3) Nothing in this section precludes any claim against an insurer or other person for violations of the Act which do not require a finding that the underlying assets of a general account constitute plan assets, regardless of whether the violation relates to a Transition Policy.

(4) If the requirements in paragraphs (c) through (f) of this section are not met

with respect to a plan that has purchased or acquired a Transition Policy, and the insurer has not cured the non-compliance through satisfaction of the requirements in paragraph (i)(5) of this section, the plan's assets include an undivided interest in the underlying assets of the insurer's general account for that period of time for which the requirements are not met. However, an insurer's failure to comply with the requirements of this section with respect to any particular Transition Policy will not result in the underlying assets of the general account constituting plan assets with respect to other Transition Policies if the insurer is otherwise in compliance with the requirements contained in this section.

(5) Notwithstanding paragraphs (a)(2) and (i)(4) of this section, a plan's assets will not include an undivided interest in the underlying assets of the insurer's general account if the insurer made reasonable and good faith attempts at compliance with each of the requirements of paragraphs (c) through (f) of this section, and meets each of the following conditions:

(i) The insurer has in place written procedures that are reasonably designed to assure compliance with the requirements of paragraphs (c) through (f) of this section, including procedures reasonably designed to detect any instances of non-compliance.

(ii) No later than 60 days following the earlier of the insurer's detection of an instance of non-compliance or the receipt of written notice of non-compliance from the plan, the insurer complies with the requirements of paragraphs (c) through (f) of this section. If the insurer has failed to pay a plan the amounts required under paragraphs (e) or (f) of this section within 90 days of receiving written notice of termination or discontinuance of the policy, the insurer must make all corrections and adjustments necessary to restore to the plan the full amounts that the plan would have received but for the insurer's non-compliance within the applicable 60 day period; and

(iii) The insurer makes the plan whole for any losses resulting from the non-compliance as follows:

(A) If the insurer has failed to comply with the disclosure or notice requirements set forth in paragraphs (c), (d) and (f) of this section, then the insurer must make the plan whole for any losses resulting from its non-compliance within the earlier of 60 days of detection by the insurer or sixty days following the receipt of written notice from the plan; and

(B) If the insurer has failed to pay a plan any amounts required under paragraphs (e) or (f) of this section within 90 days of receiving written notice of termination or discontinuance of the policy, the insurer must pay to the plan interest on any amounts restored pursuant to paragraph (i)(5)(ii) of this section at the ''underpayment rate'' as set forth in 26 U.S.C. sections 6621 and 6622. Such interest must be paid within the earlier of 60 days of detection by the insurer or sixty days following receipt of written notice of non-compliance from the plan.

(j) *Applicability dates.* (1) *In general.* Except as provided in paragraphs (j)(2) through (4) of this section, this section is applicable on July 5, 2001.

(2) Paragraph (c) relating to initial disclosures and paragraph (d) relating to separate account disclosures are applicable on July 5, 2000.

(3) The first annual disclosure required under paragraph(c)(4) of this section shall be provided to each plan not later than 18 months following January 5, 2000.

(4) Paragraph (f), relating to insurer-initiated amendments, is applicable on January 5, 2000.

(k) *Effective date.* This section is effective January 5, 2000.

Signed at Washington, D.C. this 21st day of December, 1999.

Leslie Kramerich,

Acting Assistant Secretary for Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–32 Filed 01–04–00; 8:45 am]

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January 5, 2000

Part IV

Department of Transportation

Maritime Administration

46 CFR Part 356

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–99–5609]

RIN 2133–AB38

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking (''NPRM'').

SUMMARY: The Maritime Administration (''MARAD, we, our, or us'') is soliciting public comments on implementation of the new U.S. citizenship requirements set forth in the American Fisheries Act of 1998 (''AFA''), Title II, Division C, Public Law 105–277, for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought.

The NPRM implements new statutory requirements of the AFA by raising the U.S. ownership and control standards for U.S.-flag fishing vessels of 100 feet or greater in registered length that are operating in U.S. waters, by eliminating exemptions for fishing vessels that can not meet current citizenship standards, by phasing out of operation many of the largest fishing vessels, and by establishing new criteria to be eligible to hold a preferred mortgage on such vessels. The regulations set out which transactions are permissible, which transactions will require prior approval, and which transactions are impermissible and, to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than February 22, 2000. In order to meet the statutory deadline for publishing final rules in the **Federal Register** by April 1, 2000, we are using a shortened 45 day comment period. However, comments on the information collection requirements of the NPRM will be accepted until March 6, 2000. In addition, public meetings at which oral and written comments may be presented have been scheduled for the dates and locations listed under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Comments should refer to docket number MARAD–99–5609. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://smses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel at (202) 366–5320. You may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 Seventh St., S.W., Washington, D.C., 20590–0001, or you may send e-mail to John.Marquez@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Will There Be Public Meetings on the NPRM?

Public meetings have been scheduled for the following dates and locations:

1. January 25, 2000, 9:30 a.m. to 3 p.m.—South Auditorium, Jackson Federal Building, 915 Second Avenue, Seattle, WA;
2. January 27, 2000, 9:30 a.m. to 3 p.m.—Assembly Room, Z.J. Loussac Library, 3600 Denali St., Anchorage, AK; and,
3. January 31, 2000, 9:30 a.m. to 3 p.m.—Room 6200, Nassif Building, 400 7th Street, S.W., Washington, DC.

Meeting facilities have been arranged for the entire day to ensure that all interested parties have an opportunity to comment on the NPRM. However, if there is not sufficient interest to necessitate an afternoon session, the public meetings will be adjourned after all participants have had an opportunity to comment in the morning. Accordingly, interested parties are advised to attend in the morning since the meeting will be adjourned after the conclusion of presentations and will not be reconvened in the afternoon if all parties present in the morning have had an opportunity to comment.

If you would like to provide oral comments at one of the public meetings, all that is required is that you be present and offer your comments. In order for us to have an idea of the level of participation that can be expected at these meetings, we request, but do not require, that you notify us at least five working days prior to the meeting that you plan to attend. You may notify John T. Marquez, Jr. by phone at (202) 366–5320, by fax at (202) 366–7485, or by e-mail at John.Marquez@marad.dot.gov.

Who May File Comments?

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any state government agency, any political subdivision of a State, or any interested person.

How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this NPRM in your comments.

We 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**. If possible, one copy should be in an unbound format to facilitate copying and electronic filing.

In addition to comments on the proposed rule, we specifically request that you address in your comments whether the information collection in this proposal is necessary for the agency to properly perform its functions and will have practical utility, the accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

How Can I Be Sure That My Comments Were Received?

If you want 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. If you send comments by e-mail, you will receive a message by e-mail confirming receipt of your comments. Your e-mail address should be noted with your comments.

Is Information That I Submit to MARAD Made Available to the Public?

When you submit information to us as part of this NPRM, during any rulemaking proceeding, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential. 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, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark ''CONFIDENTIAL'' on each page of the original document that you would like to keep confidential.

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 comments containing information claimed to be confidential business information, you should also include a cover letter setting forth with specificity the basis for any such claim (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552).

We will decide whether or not to treat your information as confidential. You will be notified in writing of our decision to grant or deny confidentiality before the information is publicly disclosed and you will be given an opportunity to respond.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and during the hours provided above under **ADDRESSES.**

Comments may also be viewed 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 on the first page of this document. The docket number for this NPRM is 5609. 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.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

Background

The AFA imposes new citizenship requirements for the owners of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought. The AFA, among other things:

(1) Raises, with some exceptions, the U.S. citizen ownership and control standards for U.S.-flag Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels operating in U.S. waters from a controlling interest to a 75 percent interest requirement as set forth in § 2(c) of the Shipping Act, 1916, as amended (''1916 Act'');

(2) Sets forth certain criteria for purposes of determining whether ''control'' of the owner of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels is vested in Citizens of the United States;

(3) Requires state or federally chartered financial institutions to comply with the Controlling Interest (51%) requirements of § 2(b) of the 1916 Act in order to hold a preferred mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel of 100 feet or more in registered length;

(4) Requires preferred mortgagees of vessels of 100 feet or more in registered length that are not state or federally chartered financial institutions to comply with the requirements of § 2(c) of the 1916 Act which provides that 75% of the interest in the entity must be owned and controlled by Citizens of the United States, or use an approved Mortgage Trustee that complies with the citizenship requirements of § 2(c) of the 1916 Act and other requirements of the AFA;

(5) Prohibits certain foreign-built factory trawlers from participating in the fisheries of the United States; and,

(6) Prohibits, with some exceptions, vessels above 165 feet or 750 gross tons or with engines of 3,000 horsepower or more from obtaining a fishery endorsement to the vessel's documentation.

We are required by § 203(c) of the AFA to ''rigorously'' scrutinize any transfers of ownership and control over Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and to pay particular attention to leases, charters, financings, mortgages, and other arrangements to determine if they constitute an impermissible conveyance of control to persons not eligible to own a vessel with a fishery endorsement. These regulations are to set out which transactions are permissible, which transactions will require prior approval, and which transactions are impermissible. Pursuant to § 203(b) of the AFA, these regulations will also ''to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.''

We are required to promulgate final regulations by April 1, 2000, regarding the U.S. citizenship requirements for ownership and control of vessels, unless otherwise exempted, that are 100 feet or greater in registered length and for which the owner wishes to obtain a fishery endorsement to the vessel's documentation. The regulations will become effective on October 1, 2001. Until the final regulations are published, we may not, pursuant to § 203(b) of the AFA, issue letter rulings or interim interpretations as to the effect of the AFA on Fishing Vessels.

We published an Advance Notice of Proposed Rulemaking (''ANPRM'') in the **Federal Register**, 64 FR 24311 (May 6, 1999), to solicit comments from the public and held five public hearings. We have received and evaluated the comments and are now publishing this NPRM with a request for comments from the public, as well as providing notice of upcoming public meetings.

Public Comments on the ANPRM

As the first step in this rulemaking process, we issued an ANPRM entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater To Obtain Commercial Fisheries Documents, 64 FR 24311 (May 6, 1999). The ANPRM provided an explanation of the changes in the law and requested comments, suggestions, and information from the public relating to the development of regulations necessary to implement the new statutory requirements to obtain a fishery endorsement for a documented vessel of 100 feet or greater in registered length. In response to this request, we received 19 written comments. In addition, we held five public meetings in Seattle, WA, Anchorage, AK, Boston, MA, New Orleans, LA, and Washington, DC, and met with several interested parties who requested meetings with us. The written comments, transcripts of the public meetings, and memoranda summarizing the meetings with interested parties are available for review in the rulemaking docket. Following is a summary of those comments and our response.

Several commenters requested that we provide clear guidance to the fishing industry in the regulations regarding the ownership and control requirements and that we articulate those fundamental elements of control and types of agreements with Non-Citizens that are either acceptable or impermissible. One commenter stated, however, that we should not attempt to issue regulations which define in advance all transactions which could

theoretically violate the statutory standards. The commenter suggested that we should simply recite the statutory standards and make the AFA prohibitions specific through case-by-case application.

We agree with the commenters that the industry needs clear guidance regarding how United States Citizen ownership and control will be determined. For example, in §§ 356.3–11 of the NPRM, we have defined the requirements for ownership and control by Citizens of the United States, spelled out the requirements for filing an Affidavit of United States Citizenship, identified the methods for demonstrating ownership, and established factors that we will evaluate for purposes of determining whether impermissible control over a vessel or vessel-owning entity has been transferred to a Non-Citizen. In many cases, control may be the most difficult aspect of demonstrating citizenship. Accordingly, we have set forth factors that will be deemed an impermissible transfer of control to a Non-Citizen and therefore prohibited. We have also identified certain criteria that, while not prohibited by themselves, may be deemed an impermissible transfer of control to a Non-Citizen if other indicia of control are also present in the transaction. Certain types of agreements such as loans, mortgages, charters, sales agreements, and management agreements are specifically addressed in the NPRM; however, the factors of foreign control could conceivably apply to any agreement between a Citizen of the United States and a Non-Citizen. Finally, while the NPRM does identify certain parameters and criteria that we will use in determining ownership and control by Citizens of the United States, we note that the lists of criteria are not exhaustive and that, depending on the facts involved, evaluations may be made on a case-by-case basis.

We received many comments relating to the regulation of financing agreements and mortgages. Commenters noted typical loan covenants that a lender may impose on the borrower in order to protect its interest which may involve some degree of control over the vessel's owner and the vessel. Accordingly, commenters were particularly concerned that a lack of certainty regarding allowable covenants or overly restrictive requirements could deter foreign lenders from participating in the fishing industry. Such uncertainty could potentially limit sources of financing for vessel owners.

Commenters suggested different approaches regarding how we should regulate the financing of vessels. The majority of commenters suggested that we approve, in advance, certain typical loan covenants used by all lenders who are not affiliated with the vessel owner. This would minimize disruptions to the commercial fishing industry and to the traditional financing arrangements of the industry. However, several commenters expressed concern that if MARAD published a list of loan covenants that are permissible, it would still leave open the question whether other restrictive provisions of a loan package would, in the aggregate, create an impermissible degree of control by Non-Citizens.

One commenter recommended drafting a ''safe harbor'' provision that achieves certainty by turning on the identity of the lender involved, thus allowing lenders that are financial institutions to make loans without having the regulations deal with specific loan covenants. The commenter noted ramifications for a lender that strays in controlling a borrower including: (1) Being sued by its borrower for any lost profits, and (2) being deemed a vessel operator and potentially becoming subject to strict liability for violations under CERCLA, the Oil Pollution Act, and various state environmental pollution laws.

Another commenter suggested that we should focus on differentiating between lenders on the basis of their loan portfolios and whether more than 50% of the lender's portfolio is in the fishing industry. For such lenders, the commenter suggested that we should require a signed affidavit by an officer of the lender stating that 51% of the lender's outstanding shares are owned by U.S. citizens as a documentation requirement during the issuance of a preferred ship mortgage. We should then place these lenders on a list of lenders presumed to be U.S. citizen lenders, thus creating an irrebuttable presumption that the lender meets applicable U.S. citizenship requirements. The commenter continued by stating that all standard categories of covenant provisions should be approved of in advance for all conventional lending institutions that are not directly affiliated with a vessel owner and that are not a fishing company.

One commenter put a slightly different spin on the above approach and suggested that we grant a blanket lender exemption to domestic and foreign banks who are (1) publicly traded, (2) under the supervision of national or state banking authorities, (3) not affiliated with the vessel owner, and (4) in the case of foreign banks only, who make use of an approved Mortgage Trustee. According to the commenter, such an exemption should allow the lender to include in the financing documents any covenant which it is able to negotiate with the vessel owner.

We agree that certainty is needed in the financing sector in order to provide a stable financing regime and to ensure that ample financing exists for vessel owners. Accordingly, we have proposed in § 356.23 a list of loan covenants that are expressly authorized. In addition, we are proposing in § 356.21 to give general approval to the standard loan and mortgage agreements of Non-Citizen Lenders that are using an approved Mortgage Trustee, provided that they meet certain criteria. A Non-Citizen Lender would be permitted to submit its standard loan provisions to us for approval. Once these standard loan covenants are approved, the lender would be able to enter into loan agreements without obtaining approval from us on a transactional basis. If the lender later wishes to use additional covenants that were not included in the general approval, it must submit those covenants to us for approval. Failure to receive such approval would void the general approval.

With respect to the use by Non-Citizen Lenders of an approved Mortgage Trustee, referred to in the ANPRM as a Westhampton Trustee, several commenters asserted that Congress intended that we resurrect our prior regulations for trustees to enable a Non-Citizen Lender to secure its loan with a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. One commenter stated that he did not believe Congress intended any further regulation of those mortgages and that any state or federally regulated U.S. bank, whether U.S. or foreign owned, should be eligible to serve as a Trustee.

We agree that the regulations found in 46 CFR Part 221 should serve as a model for the NPRM and have patterned our proposed regulations in §§ 356.27–37 after the old ''Westhampton Trustee'' regulations. However, we note that the AFA is quite specific about the requirements to be a qualified Trustee (referred to as a ''Mortgage Trustee'' in the NPRM) and does not provide flexibility to allow a state or federally regulated U.S. bank that does not meet the Controlling Interest requirements of § 2(b) of the 1916 Act, 46 App. U.S.C. 802(b), or any other foreign entity, to be a Mortgage Trustee.

A number of commenters focused on management agreements, exclusive sales or marketing agreements, and other arrangements that may be considered normal in the day-to-day operations in

the fishing industry, but that may be viewed by us as conveying impermissible control to a Non-Citizen. One commenter suggested that we should limit our regulation of the 75% ownership and control requirement to Persons or entities that have the right to replace or limit the actions of the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which owns the vessel. Several commenters suggested that exclusive sales agreements and management contracts are common place in the fishing industry and are entered into on a daily basis. Consequently, the commenters contended that requiring prior approval or case-by-case review of such traditional agreements or review of companies that do not own fishing vessels to determine their citizenship would pose an unreasonable burden on the industry and would not be a workable business practice.

One commenter noted that if all officers and stockholders of the companies involved are United States Citizens and are not controlled by foreign citizens, it should not be necessary for us to scrutinize management or charter agreements between the United States Citizen owned and controlled companies. The commenter contended that scrutiny of management and operating companies should be focused on whether (1) a catcher vessel's logistics, maintenance, or personnel hiring operations are controlled by a shore plant or mothership that is owned or controlled by Non-Citizens, (2) the catcher vessel is obligated to sell its harvest to a foreign owned or controlled processing plant, or (3) short-term loan agreements convey management prerogatives to a Non-Citizen Lender.

Another commenter noted that enforcement of AFA regulations which preclude the participation of Non-Citizens in the operation of its companies would erode its ability to compete in international markets and may ultimately result in the demise of its industry sector. The commenter indicated that many management companies rely on foreign advisors to perform many of their functions of providing support in engineering, repair and maintenance, crew hiring, claims management, strategic planning, accounting, cash management, banking relationships, insurance management, marketing, product traffic management, credit management, quality control, production management, record keeping and reporting, and government relations.

Several commenters contended that we should not preclude using contracts for the purchase of all or a significant portion of a vessel's catch as security for financing various transactions relating to a specific vessel. Typical long-term contracts for the sale of all or a large portion of the vessel's catch were suggested by the commenter to generally involve a mutually beneficial agreement between the vessel owner and the processor or purchaser of the vessel's catch, and do not give the purchaser any control over the actual operation of the vessel or the vessel owner. According to the commenter, preclusion of these types of sales agreements would: (1) Deny fishing vessel owners access to traditional sources for marketing their catch; (2) prejudice U.S. processors and purchasers who happen to be non-section 2 citizens in favor of processors who happen to be section 2 citizens; and, (3) make the formation of fishery cooperatives in the pollock fishery virtually impossible as the majority of pollock processors and purchasers are non-section 2 citizens. The commenter emphasized that nothing in the AFA attempts to distinguish the sale of a vessel's catch to a foreign processor or to prohibit a foreign processor from purchasing the catch of U.S. fishing vessels.

We generally agree with the commenters that case-by-case review of management contracts, charters or exclusive or long-term sales or marketing contracts would pose an unreasonable burden. Therefore, we propose in § 356.41 and § 356.43 to allow owners or bareboat charterers of vessels to enter into exclusive sales agreements with Non-Citizens without prior approval from us, provided that these agreements meet certain criteria. For example, the agreements cannot contain provisions that would transfer control over the vessel or vessel-owning entity to a Non-Citizen, including the ability to control the hiring, management, and disciplining of crew, and the ability to direct the vessel's operations and harvesting activities. Similarly, management agreements that are solely administrative in nature and do not convey control over the vessel's owner or the vessel to a Non-Citizen are permitted. The owner or bareboat charterer would be required to identify and provide a summary of the terms of management agreements within 30 days of execution and to certify to the Citizenship Approval Officer that the agreement does not convey control over the vessel or vessel-owning entity to a Non-Citizen.

Long-term or exclusive sales or marketing contracts are authorized in the proposed rule, provided that they do not convey control over the vessel or vessel owner to a Non-Citizen. Section 356.43 sets out certain provisions that are expressly authorized for use in long-term or exclusive sales or marketing agreements that might otherwise be construed to convey control over the vessel or vessel owner to a Non-Citizen. If an owner or bareboat charterer wishes to enter into a long-term or exclusive sales or marketing agreement that contains other provisions, the owner or charterer must first obtain approval from the Citizenship Approval Officer that such provisions do not convey control to a Non-Citizen.

With respect to charters, we agree that a review of all charters would be impractical and overly burdensome. Therefore, we propose in § 356.39 to allow time charters and voyage charters to Non-Citizens of Fish Processing Vessels and Fish Tender Vessels, provided that the vessel is not used for harvesting. The time charter or voyage charter must be a true time charter or voyage charter and may not include provisions that would transfer control to the charterer, such as the right to hire or discipline the crew. We will not require review of charter agreements prior to execution. However, we propose to require a copy of the charter to be submitted within 30 days of execution in order to confirm that the charter is not a bareboat charter and that there is not an impermissible transfer of control. Time charters and voyage charters of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels used to harvest fish are prohibited. Bareboat charters to Non-Citizens are also prohibited because a bareboat charter, by definition, results in a transfer of control to the charterer. Any charter to a Citizen of the United States is allowed and review of the charter will not be required. However, because a bareboat charterer will have possession and control of the vessel, the charterer must demonstrate that it is a Citizen of the United States.

A number of commenters also noted that loans to owners of Fishing Vessels may be made by Non-Citizens who have a contractual relationship with the owner. These loans may be for vessel construction and modification, as well as for working capital to fund the vessel's operation and the transportation and sale of the vessel's catch. Many times these loans are based on a contractual relationship that a vessel owner or bareboat charterer has with a fish processor, such as an exclusive sales agreement or some other agreement. On occasion, a lender may receive a preferred ship mortgage as

security for the financing. The commenters suggested that these loans are traditional financing arrangements and thus should not be regulated by us. We recognize that such financing arrangements may be commonplace in the fishing industry and wish to minimize our involvement, to the extent practicable. Therefore, we propose in § 356.45 to allow vessel owners and bareboat charterers who have an exclusive or long-term sales or marketing agreement with a Non-Citizen to enter into an agreement with the Non-Citizen for an advance of funds. This approval is conditioned on the requirements that the funds must be used for working capital, the agreement may not contain provisions that would give the Non-Citizen control over the vessel, vessel owner, or bareboat charterer, and the amount of the advancement cannot exceed the annual value of the contract. The regulations do not permit a Non-Citizen with whom a vessel owner or bareboat charterer is conducting business to loan money to the vessel owner or bareboat charterer where the loan is for capital improvements to a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Such financing from Non-Citizens with whom the owner or bareboat charterer has an ongoing relationship would convey an impermissible degree of control to the Non-Citizen. Accordingly, consistent with our past practice in other programs, such financing for capital improvements must be obtained from an unrelated third party.

A commenter representing fishery cooperatives stated that the AFA's ownership and control requirements have no relevance to the establishment and operation of cooperatives of the catcher/processor sector for pollock and Pacific whiting fisheries. Other commenters suggested that: (1) MARAD should not interfere with a Non-Citizen agreement with the pollock cooperatives, (2) MARAD should not establish disparate treatment of Non-Citizen processors and Citizen processors, and (3) the AFA does not require such treatment because it is concerned with vessel ownership and control and not processing or purchasing.

We do not propose to specifically regulate or interfere with the formation of fishery cooperatives. However, an owner or bareboat charterer is prohibited from entering into any agreement that conveys control over the vessel, vessel-owning entity, or bareboat charterer to a Non-Citizen. Consequently, a fishery cooperative agreement cannot contain terms that would convey control to a Non-Citizen such as the right to select the management company for a vessel, to hire or discipline crew, or to direct the harvesting operations of a vessel. If an owner or bareboat charterer enters into an agreement that conveys control over the vessel, vessel-owning entity, or bareboat charterer, the Citizenship Approval Officer may determine that the owner is not eligible to document the vessel with a fishery endorsement.

Several commenters noted that § 213(g) of the AFA provides that if provisions of the AFA or the regulations are inconsistent with the obligations of existing international treaties or agreements, the regulations will not apply to vessel owners or mortgagees that are nationals of the country with which we have an agreement. The commenters pointed out that they believe that the Treaty of Friendship, Commerce and Navigation between the Republic of Korea and the United States of America, which was signed on November 28, 1956, and entered into force on November 7, 1957, and the Treaty and Protocol between the United States of America and Japan Regarding Friendship, Commerce and Navigation, which was signed on April 2, 1953, and entered into force on October 30, 1953, are in conflict with the ownership and mortgage provisions of the AFA. The commenters contend that the regulations should not apply to vessels owned by nationals of Japan and Korea by virtue of § 213(g) of the AFA. Accordingly, they request that we identify which international treaties we deem to be inconsistent with the provisions of the AFA. Because the exemption applies only to the particular owner or Mortgagee of a specific vessel, we propose in § 356.53 to establish a procedural mechanism whereby owners and Mortgagees of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels can petition us for a decision that they are exempt from the provisions of the proposed rule. The owner of a vessel that may be exempt due to an existing Treaty is not required to sell its ownership interest in order to be in compliance with the United States Citizen ownership and control requirements of the AFA. However, if the owner sells part of its ownership interest to another foreign entity the exemption no longer applies. In addition, if the owner sells part of its interest to another entity, the requirements of the AFA apply to the new owner.

One commenter noted that the new provisions of 46 U.S.C. 12102(c)(6), created by § 202(a) of the AFA, will prohibit certain larger vessels from being eligible for a fishery endorsement unless they meet certain conditions. These conditions include, among other things, that a certificate of documentation was issued to the vessel with a fishery endorsement that was effective on September 25, 1997, and that in the event of the invalidation of the fishery endorsement after the date of the enactment of the AFA, application is made for a new fishery endorsement within 15 business days. The commenter noted that there are many ''technical violations'' that could cause a vessel's documentation to lapse. For example, if the vessel owner fails to notify the Coast Guard of a change in the vessel's home port or if a change in ownership has occurred, the documentation status of the vessel is invalid, and therefore the fishery endorsement is invalid. If the owner does not apply to redocument the vessel within 15 business days it could permanently lose its right to participate in the fishing industry. The commenter explained that some violations invalidate a vessel's documentation for some purposes but not for others, such as for purposes of a Preferred Mortgage. The commenter suggested that we take a similar approach for these larger vessels and identify the specific violations that would cause a vessel to lose its fishery endorsement.

Violations that would render a vessel's documentation, and therefore its fishery endorsement, invalid are outlined in the Coast Guard's regulations at 46 CFR Part 67. We do not intend for the 15-day period to act as a permanent bar to a vessel's eligibility for a fishery endorsement where the owner did not have written notice that the fishery endorsement was invalidated and on what grounds. Accordingly, we will provide notice to the vessel owner of a violation of the requirements of part 356 that would cause a vessel owner to lose the fishery endorsement to a vessel's documentation. The ultimate determination as to when a violation of the Coast Guard regulations has occurred and rendered the vessel's documentation and fishery endorsement invalid remains with the Coast Guard; however, for purposes of this NPRM the 15-day period will not begin to run until written notice has been received by the vessel owner.

Discussion of Proposed Rule

The AFA requires us to promulgate regulations implementing the new United States citizenship and control requirements for certain vessels of 100 feet or greater in registered length. In order for a vessel of 100 feet or greater in registered length to be eligible for a

fishery endorsement, 75% of the interest in the owner, at each tier of ownership and in the aggregate, must be owned and controlled by Citizens of the United States. The AFA also specifies criteria for mortgagees to be eligible to hold a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, prescribes requirements for Non-Citizen Lenders to use an approved Mortgage Trustee to hold a Preferred Mortgage, and prohibits Charters of Fishing Vessels to Non-Citizens where the vessel is used to harvest fishery resources. In determining whether a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel is controlled by Citizens of the United States, we are required to rigorously scrutinize contracts and agreements that could result in a conveyance of impermissible control over the vessel or vessel-owning entity to a Non-Citizen. Accordingly, the NPRM addresses not only the requirements for an entity to be eligible to own a vessel with a fishery endorsement, but also requirements that must be met by Preferred Mortgagees, Mortgage Trustees, Non-Citizen Lenders, management companies, charterers, and other entities that engage in contractual or other arrangements with the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and that could result in a transfer of control to a Non-Citizen.

Ownership

In order for an owner of a vessel of 100 feet or greater in registered length to be eligible to obtain a fishery endorsement to the vessel's documentation, it must demonstrate that: (1) 75% of the interest in the entity that owns the vessel is owned by Citizens of the United States, and (2) 75% of the control of the entity that owns the vessel is owned by and vested in Citizens of the United States. Evidence of United States Citizen ownership of a vessel-owning entity is demonstrated through the filing of an Affidavit of United States Citizenship as provided for in § 356.5. The Affidavit of U.S. Citizenship requires the owner to provide relevant information to demonstrate that it qualifies as a Citizen of the United States within the meaning of 46 U.S.C. 12102(c), § 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and 46 CFR 356.3. The form of this Affidavit is substantially the same as the one set forth at 46 CFR Part 355, which is used by applicants and others who must be Citizens of the United States in order to qualify for various programs administered by MARAD.

There are two methods that an entity required to file an Affidavit of U.S. citizenship can use to demonstrate that it is owned by Citizens of the United States. The two methods, direct proof and fair inference, are described in § 356.7 and have been used since the 1940's as a means of establishing citizenship. The direct proof method is used for individuals or entities that have 30 or fewer stockholders, partners, or members. Under the direct proof method, the owner of a vessel or any other entity that is required to demonstrate its citizenship must provide evidence of the citizenship of stockholders, partners and members owning at least 75% of the interest. The amount of interest, including the number of shares and the percentage, that is owned by each stockholder, partner or member must be provided. In addition, the entity must provide citizenship information for officers and directors of a corporation or the equivalent persons in a partnership, Limited Liability Company, or other entity.

The fair inference method provided for in § 356.7(c) stems from the case *Collier Advertising Service, Inc.* v. *Hudson River Day Line,* 14 F. Supp. 335 (S.D.N.Y. 1936). The fair inference method is intended to be used by corporations that are publicly traded or that have more than 30 stockholders. This method was recognized by the court in the *Collier* case as a means for a publicly traded corporation to establish its U.S. citizenship within the meaning of § 2 of the 1916 Act without verifying the actual citizenship of each stockholder. The fair inference method allows a company to ''infer'' United States Citizenship based on a certain percentage of the stock in each class being held by persons with a registered U.S. address. Owners of Vessels, Mortgage Trustees, and bareboat charterers must comply with the requirement that 75% of the interest in the entity is owned by Citizens of the United States. Using the fair inference method, they would have to demonstrate that 95% or more of the stock for each class is held by stockholders with a registered U.S. address in order to infer that 75% of the interest in the corporation is owned by Citizens of the United States. Mortgagees of vessels that must meet the Controlling Interest requirements of § 2(b) of the 1916 Act, 46 App. U.S.C. § 802(b), would be required to demonstrate that 65% or more of the stock for each class of stock is held by stockholders that have a registered U.S. address in order to infer that at least 51% of the interest in the corporation is owned by Citizens of the United States. The stockholder-address information can be supplied through the stock books and records of the corporation. In addition to the citizenship of certain officers and directors of the corporation, owners of 5% or more of the stock in each class must be specifically identified and their citizenship must be established.

The AFA requires that 75% of the interest in a vessel owner ''at each tier and in the aggregate'' be owned and controlled by Citizens of the United States. Therefore, the owner must submit a composite Affidavit of United States Citizenship demonstrating United States citizenship for all entities that are being relied upon to establish the required percentage of U.S. ownership and control, including entities at subsequent tiers, such as parent corporations.

We have construed the phrase ''in the aggregate'' to mean that a particular Non-Citizen may not own or control more than 25% of the vessel or vessel-owning entity through its combined ownership at multiple tiers. We recognize that this term could be interpreted much more restrictively to prohibit total foreign interest in the vessel or vessel-owning entity by all owners from exceeding 25%. However, we believe that such a restrictive reading would limit the participation in the fishing industry of publicly traded companies and the ability of vessel owners to obtain equity participation from other entities that are Citizens of the United States, but which may have some minor foreign ownership.

In order for an owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to qualify for a fishery endorsement by the effective date of the new ownership requirements of the AFA, an Affidavit of United States Citizenship must be submitted to the Citizenship Approval Officer no later than June 1, 2001. An owner may get a letter ruling from the Citizenship Approval Officer prior to June 1, 2001, by filing an Affidavit of United States Citizenship at any time after October 1, 2000, accompanied by the other applicable documentation required to demonstrate U.S. citizenship. An owner that receives a letter ruling will be required to notify the Citizenship Approval Officer of any changes before October 1, 2001, and to submit a certification to the Citizenship Approval Officer within 10 days prior to October 1, 2001, stating that the information in the Affidavit of United States Citizenship remains true and accurate, or if any information has changed, a description of the changes.

Control

As noted above, control is also a factor in our determinations regarding whether an entity is a Citizen of the United States or meets the Controlling Interest requirements of § 2(b) of the 1916 Act. Control is a difficult term to define because control can be exerted over a vessel or vessel-owning entity through a wide variety of typical financing and operational arrangements in the fishing industry to which a Non-Citizen may be a party. For example, where a Non-Citizen owns 25% of the interest in a vessel or vessel-owning entity, and the other 75% is owned by Citizens of the United States, control could still be conveyed to the Non-Citizen through rights granted in the Articles of Incorporation, By-Laws, or other comparable organizing or operating documents. Similarly, other contractual arrangements with Non-Citizens, such as mortgage and financing agreements, management agreements, and exclusive or long-term sales or marketing agreements, can potentially result in a conveyance of control to Non-Citizens.

We are required to determine whether control has been transferred to a Non-Citizen in several contexts. In the case of an owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, 75% of the control over the vessel and the vessel-owning entity must be owned by and vested in Citizens of the United States. In the case of a Mortgagee that holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, the Mortgagee must comply with the 75% ownership and control requirement unless it is a state or federally chartered financial institution, in which case it must comply with the Controlling Interest criteria that generally require at least 51% of the ownership and control to be vested in Citizens of the United States. In the case of a Mortgage Trustee that is holding a mortgage on a Fishing Vessel for the benefit of a Non-Citizen Lender, 75% of the control over the Fishing Vessel must be vested in Citizens of the United States.

The AFA sets forth certain factors that are to be deemed control. Section 356.11 spells out these elements of control, as well as other criteria that we consider in making our determination as to whether there has been an impermissible transfer of control to a Non-Citizen. Paragraph (a) lists indicia of control that would be considered impermissible. Paragraph (b) lists other indicia of control that we may consider, but that may not be deemed impermissible by themselves. While we have attempted to list indicia of control that we may consider permissible or impermissible, the list is not all inclusive, and in many cases control will be determined on a case-by-case basis.

Mortgages

Mortgages are one of the key agreements in which control over a vessel could potentially be conveyed to a Non-Citizen. Section 203(b) of the AFA dictates that a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel of 100 feet or more in registered length can only be held by: (1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c); (2) a state or federally chartered financial institution that satisfies the Controlling Interest criteria of § 2(b) of the Shipping Act, 1916, 46 App. U.S.C. 802(b); or (3) a Mortgage Trustee that complies with the requirements of 46 U.S.C. 12102(c)(4), § 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and §§ 356.27–37 of this proposal.

A Preferred Mortgage is the primary instrument in the maritime industry for lenders to secure a vessel as collateral. In order for a lender to be given ''preferred status'' for its mortgage, it must meet the requisite citizenship requirements and otherwise qualify to hold a preferred mortgage filed with the Coast Guard. If a lender is deemed to be qualified to hold a preferred mortgage, a mortgage filed with the Coast Guard will be given a preferred status which entitles the Mortgagee's security interest to a priority over certain types of liens against the vessel.

In order to provide some certainty for lenders so that they will know what loan covenants will be allowed, we have proposed in § 356.23 to authorize Non-Citizen Lenders to use certain restrictive loan covenants that we have determined do not covey impermissible control. In addition, we propose to allow Non-Citizen Lenders that will be using a Mortgage Trustee to get general approval of their standard loan documents and covenants. If the lender limits its loan agreements to those covenants for which it has received general approval, it will not be required to obtain transactional approval from us for its loans. However, use of restrictive loan covenants that have not been approved by the Citizenship Approval Officer will render the general approval void. This could result in a loss of the owner's eligibility to document the vessel with a fishery endorsement.

Mortgage Trustees

Section 202 of the AFA also revives in principle what was commonly referred to as a Westhampton Trust arrangement. Under this trust arrangement, a Non-Citizen Lender that is not eligible to hold a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may still receive a Preferred Mortgage if it uses an approved trustee, referred to in the NPRM as a Mortgage Trustee, to hold the Preferred Mortgage and the debt instrument. The criteria for an entity to qualify as a Mortgage Trustee are spelled out in § 356.27 of the NPRM and require that the entity:

(1) Qualify as a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) Be organized as a corporation and doing business under the laws of the United States or of a State;

(3) Be authorized under the laws of the United States or of the State under which it is organized to exercise corporate trust powers;

(4) Be subject to supervision or examination by an official of the United States Government, or of a State;

(5) Have a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(6) Meet any other requirements prescribed by the Maritime Administrator.

To become a qualified Mortgage Trustee, an entity must submit an application to the Citizenship Approval Officer accompanied by an Affidavit of United States Citizenship and other required documentation to demonstrate that it is a Citizen of the United States. Once approved, the Mortgage Trustee is required to advise the Citizenship Approval Officer of any changes to its citizenship information as they occur throughout the year. The Mortgage Trustee must also submit, on an annual basis, an Affidavit of United States Citizenship, a current version of its Articles of Incorporation and Bylaws, a copy of its most recent published report of condition, and a list of the vessels and lenders for which it is acting as Mortgage Trustee.

Charters

Section 202(a) of the AFA amends 46 U.S.C. 12102(c) by adding a new paragraph (c) that specifically prohibits charters to Non-Citizens of Fishing Vessel, Fish Processing Vessel, and Fish Tender Vessels that are used for fishing. The prohibition on charters to Non-Citizens is, however, limited to charters

of vessels used for fishing or harvesting of fishery resources.

The position of a bareboat charterer is quite different from that of a time charterer. It has long been recognized in the law of admiralty that a bareboat charterer is to be treated as the owner of the vessel, generally called the owner pro hac vice. Therefore, a bareboat charter to a Non-Citizen would result in an impermissible transfer of control over the vessel. A time or voyage charterer has use of the vessel; however, the charterer merely rents cargo space. Under a typical time or voyage charter, the owner of the vessel retains possession of and maintains the vessel, employs and pays the crew and is responsible for the expenses of running the vessel. The charterer pays for bunkers, pilots, tugs wharfage, and other port charges arising at the places to which he directs the vessel, but he would not be considered to have impermissible control over the vessel.

Accordingly, we propose in § 356.45 to permit time charters and voyage charters of Fish Processing Vessels and Fish Tender Vessels to Non-Citizens for purposes other than the harvesting fish or fishery resources. However, because charters of Fish Processing Vessels and Fish Tender Vessels to Non-Citizens must still comply with the requirement that impermissible control over the vessel not be conveyed to a Non-Citizen, we propose to require submission of time charters and voyage charters to Non-Citizens within 30 days of execution to confirm that there is not an impermissible transfer of control. Bareboat charters of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels to Non-Citizens for any use are prohibited because a bareboat charter by its very nature results in a transfer of possession and control over the vessel.

Management Agreements

Section 203(c) of the AFA requires us to scrutinize any agreements that may convey control over a Fishing Vessel, Fish Processing Vessel, Fish Tender Vessel, or the vessel's owner to a Non-Citizen. We realize that owners and bareboat charterers may enter into a variety of management agreements to provide different services for the vessel without transferring control over the vessel or vessel-owning entity to a Non-Citizen. In order to permit owners and bareboat charterers of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels to conduct business in a timely fashion and with a reasonable degree of certainty, we propose in § 356.41 to allow them to enter into certain management contracts and agreements without prior approval from us. Such contracts must be solely advisory in nature and may not convey impermissible control over the vessel or the owner of the vessel. Accordingly, we expressly authorize management contracts in which the management company solely provides for marketing, technical services, quality control assurance, and other ministerial services that do not involve the actual operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and do not convey any right to the management company to control the operation of the vessel or the vessel owner. However, an owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel is prohibited from entering into management contracts with Non-Citizens that would effectively convey control over the vessel to the Non-Citizen management company by allowing the Non-Citizen management company to discipline or replace the crew or the master, direct the operations of the vessel or to effectively gain control by any other means over the operation and management of the vessel or vessel owner. The owner or bareboat charterer is required to provide a description of any management agreements into which it has entered and to provide a written declaration and warranty that the management agreement is a technical services type agreement authorized by us and does not contain provisions that transfer control over the vessel or the vessel owner to a Non-Citizen.

Exclusive or Long-Term Sales or Marketing Agreements

Long-term or exclusive sales or marketing contracts for all or a portion of the catch of a Fishing Vessel or Fish Processing Vessel are currently entered into between Non-Citizens and owners or bareboat charterers of the vessels. These contracts may potentially provide a mechanism under which control over a vessel or vessel-owning entity could be transferred to a Non-Citizen. Section 203(c) of the AFA requires that we scrutinize such agreements to ensure that there is not an impermissible transfer of control to a Non-Citizen. Commenters have suggested that these contracts are common place in the fishing industry and generally do not convey any rights to the buyer or marketer to control the vessel or vessel-owning entity and that too much regulation by us would be overly burdensome and would prevent owners from entering into necessary sales and marketing agreements in a timely manner. Accordingly, we are proposing in § 356.43 to allow owners and bareboat charterers to enter into such agreements or contracts with Non-Citizens, without requiring our prior approval, if the contract does not contain provisions that convey control over the vessel or vessel-owning entity to the Non-Citizen. Section 356.43(b) specifically lists provisions which may be included in such agreements that are expressly authorized and that will not be deemed an impermissible transfer of control. If an owner or bareboat charterer wishes to enter into such an agreement that contains provisions other than those listed in subparagraph 356.43(b), it must obtain the approval of the Citizenship Approval Officer prior to entering into the agreement.

Financing Arrangements Other Than Vessel Mortgages

Financing of Fishing Vessel, Fish Processing Vessel, and Fish Tender Vessel operations is not limited to the mortgage of the vessel. We recognize that owners and bareboat charterers may enter into other financing arrangements for working capital or to finance improvements to such vessels. Section 203(c) of the AFA requires that we scrutinize financing arrangements that could potentially convey control over a Fishing Vessel, Fish Processing Vessel, Fish Tender Vessel, or a vessel-owning entity to a Non-Citizen. We do not consider an advance of funds by a purchaser to whom fish has been sold but not yet delivered, or by a consignee to whom fish has been delivered for sale under a consignment agreement but has not yet been sold, to constitute an impermissible transfer of control and do not restrict such transactions. We will, however, regulate certain other financing arrangements, and propose in § 356.45 to allow owners and bareboat charterers of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels to enter into financing arrangements that are not secured by a mortgage on the vessel, such as an advance of funds owed under a long-term or exclusive sales contract that is consistent with § 356.43, provided that the Non-Citizen Lender is not granted any rights whatsoever to control the ownership, operation, management, or harvesting activities of the vessel or its owner. The owner or bareboat charterer must submit a description of the financing agreement to the Citizenship Approval Officer within 30 days of execution, accompanied by a declaration and warranty signed by the owner or bareboat charterer that the contract or agreement does not contain any covenants that convey control over the vessel, vessel owner, or bareboat charterer to a Non-Citizen. The owner is

not authorized in this section or elsewhere in the NPRM to enter into a financing arrangement for a capital improvement of the vessel with a related Non-Citizen. An owner may only obtain financing of capital improvements on the vessel through financing from an unrelated third party.

Exemptions for Certain Vessels

Section 202(a) of the AFA creates a new paragraph (6) in § 12102(c) of Title 46 United States Code. The amended 46 U.S.C. 12102(c)(6) prevents large Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels from entering U.S. fisheries, including former U.S.-flag vessels that have reflagged in recent years to fish in waters outside of the U.S. exclusive economic zone. Section 356.47 implements the requirement that, unless otherwise exempted, a vessel is not eligible for a fishery endorsement to its documentation if: (1) it is greater than 165 feet in registered length, (2) is more than 750 gross registered tons, or (3) possesses an engine or engines capable of producing a total of more than 3,000 shaft horsepower.

A Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that meets the above criteria will still be eligible for a fishery endorsement if: (1) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997, (2) the vessel is not placed under foreign registry after October 6, 1998, (3) in the event of the invalidation of the fishery endorsement after October 6, 1998, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation, or (4) the vessel is engaged exclusively in the menhaden fishery in the geographic region governed by the South Atlantic Fisheries Council or the Gulf of Mexico Fisheries Council.

With regard to the third requirement, Part 356 identifies ways in which a vessel owner may be deemed ineligible to document a vessel with a fishery endorsement because of excessive ownership or control of the vessel or vessel owner by a Non-Citizen. If we determine that these regulations have been violated and that the owner is no longer eligible to document the vessel, the owner will be notified by us in writing that it has 15 days to cure the problem or that it will no longer be eligible to document the vessel with a fishery endorsement. Other reasons for which a vessel's documentation will be invalidated, thus causing the fishery endorsement to be invalid, are found in the Coast Guard regulations at 46 CFR Part 67. We do not believe that failure to apply to redocument the vessel within the 15-day period is intended to act as a permanent bar to the vessel being documented with a fishery endorsement where the owner did not receive written notice that the vessel's documentation, and therefore the fishery endorsement, was invalidated. The Coast Guard is the appropriate agency to determine whether a violation of its regulations has caused the fishery endorsement to be invalid thus triggering the 15-day period for the owner to reapply. However, the 15-day period will not begin to run until the owner has received written notice of the violation.

International Agreements

Section 213(g) of the AFA provides that where there is a conflict between an international agreement or treaty and the provisions of the AFA, the provisions of the AFA that are in conflict with the international agreement will not apply to specific vessels covered by the agreement. The NPRM establishes a procedural mechanism by which an owner or Mortgagee can petition for an exemption from the requirements of the NPRM if it believes that there is a conflict between the AFA and an international agreement to which a particular vessel is subject.

Violation of Harvesting or Processing Caps

Section 210(e)(3) of the AFA requires MARAD, upon the request of the North Pacific Fishery Council or the Secretary of Commerce, to review any allegation that an individual or entity has exceeded the percentage of its harvesting or processing cap as provided for in § 203(e)(1) or (2) of the AFA. Section 356.55 of the NPRM sets forth a process whereby the Citizenship Approval Officer, upon such a request, will review the allegations and submit a decision to the North Pacific Fishery Council and the Secretary of Commerce.

Plain Language

This NPRM is one of our first rulemaking documents to be published under the new plain language directive. We welcome any comments and suggestions on the use and effectiveness of plain language techniques in this document or other suggestions to improve our use of plain language in future rulemakings.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is a significant regulatory action under § 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is not economically significant under § 3(f)(1) of the Executive Order. However, the rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of significant public and congressional interest.

This NPRM proposes regulations pursuant to the AFA. The AFA raises the U.S. citizen ownership and control requirements for U.S.-flag Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels operating in U.S. waters from 51% to 75%. The AFA also eliminates exemptions for vessels that cannot meet current citizenship standards and phases out of operation many of the largest vessels. Section 203 of the AFA requires that we promulgate regulations that: (1) prohibit impermissible transfers of ownership or control, (2) identify transactions that will require our prior approval, and (3) identify transactions that will not require our prior approval. To the extent practicable, the regulations are required to minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the formation of fishery cooperatives. The statutory changes are intended to give U.S. interests a priority in the harvest of U.S. fishery resources. The regulations are required to be issued in final form by April 1, 2000, and will become effective on October 1, 2001.

The new statutory requirement that 75% of the ownership and control of an entity owning a documented vessel of 100 feet or greater in registered length be vested in Citizens of the United States in order for the vessel to be eligible for a fishery endorsement is expected to impact a relatively small segment of the fishing industry. There are over 36,000 vessels that currently have a fishery endorsement. Based on information from the Coast Guard Vessel Documentation Center, we believe that less than 550 of these vessels are 100 feet or greater in registered length and thus subject to these proposed regulations. These approximately 550 vessels are owned by roughly 400 different entities. We estimate that less than 6% of the nearly 550 vessels are currently owned by entities that do not meet the 75% ownership requirement and that may be required to increase the level of United States Citizen participation in their ownership structure so as to comply with the requirements of the AFA.

The AFA also requires that 75% of the control over a vessel or vessel-owning entity be vested in Citizens of the

United States. Therefore, owners that comply with the ownership requirements may still be impacted by this NPRM if they have entered into contracts or agreements that would convey impermissible control to Non-Citizens. Agreements that convey impermissible control over a vessel or vessel-owning entity are prohibited by the AFA. However, we have attempted in this rulemaking to minimize the review of certain contracts and agreements so as not to unduly interfere with the operation of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels.

Some lenders financing Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels could also be impacted by this NPRM if they do not meet the requisite United States Citizenship requirements to hold a Preferred Mortgage on such vessels. A Non-Citizen Lender that does not qualify to hold a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel in its own right may receive a Preferred Mortgage through the use of an approved Mortgage Trustee that qualifies as a Citizen of the United States. It has been our experience that the use of a Mortgage Trustee imposes minimal cost and burden compared to the overall benefits of receiving a Preferred Mortgage or security for a loan. Therefore, while the Non-Citizen Lender may incur some cost associated with using a qualified Mortgage Trustee to hold the Preferred Mortgage, the burden will be minimal; the Non-Citizen lender will not be prohibited from financing Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels; and, minimal costs should be passed on to vessel owners.

We do not have estimates of the total cost of the requirements of the statute or this NPRM at this time because little cost information was submitted by the industry in response to the ANPRM. The preliminary regulatory analysis reflects the comments that were received in response to the ANPRM.

Discussion of Alternatives

The AFA specifically requires that we issue regulations that set out the requirements for owners of vessels to file, on an annual basis, a statement of citizenship setting forth all relevant facts regarding vessel ownership and control that are necessary to demonstrate compliance with § 2(c) of the Shipping Act of 1916, 46 App. U.S.C. 802(c), and with 46 U.S.C. 12102(c). Section 203(b) of the AFA requires that the regulations conform, to the extent practicable, with our regulations establishing the form of citizenship affidavit set forth in 46 CFR part 355, as in effect on September 25, 1997. The form of the statement is also required to be written in a manner that will allow the owner of each vessel to satisfy any annual renewal requirements for a certificate of documentation. Section 203(c) requires transfers of ownership and control of vessels after October 1, 2001, to be rigorously scrutinized for violations of the ownership and control requirements, with particular attention given to leases, charters, mortgages, financing, contracts for the purchase over time of all or substantially all of a Fishing Vessel's catch, and other arrangements that may convey control over the management, sales, financing, or other operations of an entity. In contrast to the specific requirement of § 203(c) that we rigorously scrutinize certain transactions, is the more general mandate of § 203(b) that the regulations, to the extent practicable, minimize disruptions of the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

We have considered various alternatives to implement the AFA and the impact of these alternatives on the regulated community and on small business entities in the fishing industry. Although the AFA grants broad authority to us to regulate transactions related to the ownership and control of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, we have attempted to promulgate requirements that pose the least possible burden on the regulated public, while still providing us with the information necessary to implement our responsibilities under the AFA.

The requirements in the NPRM for an entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to provide evidence of United States citizenship are modeled after our existing regulations in 46 CFR part 355. However, the AFA specifically requires that 75% of the interest in an entity be owned and controlled by Citizens of the United States ''at each tier of ownership in such entity and in the aggregate.'' In interpreting the new requirement that 75% of the interest be owned and controlled ''in the aggregate'' by Citizens of the United States, we considered two alternatives. The phrase could be given a very strict construction to prohibit more than 25% of the ownership structure from being owned or controlled by Non-Citizens. However, such an interpretation would make it very difficult for publicly traded companies to participate in the fishing industry or for companies to enter into partnering arrangements. For example, a publicly traded company could not enter into a partnership with a Non-Citizen to own a Fishing Vessel whereby the Non-Citizen would own 25% of the vessel unless 100% of the publicly traded company was owned by Citizens of the United States. Under such an arrangement the purchase of one share of stock in the publicly traded company by a Non-Citizen could render the owners of the vessel ineligible to obtain a fishery endorsement to the vessels documentation.

We believe that a more reasonable alternative is to require that no more than 25% of the interest in a vessel owner must be owned ''in the aggregate'' by a particular Non-Citizen. This requirement, which is set forth in § 356.11, would eliminate control of a vessel owned by a particular Non-Citizen while at the same time permitting more foreign investment in the fishing industry thus increasing the options for vessel owners to raise capital.

We have also reviewed alternatives with respect to the approval and oversight of mortgages and Mortgage Trustees. While § 203(c) of the AFA requires us to rigorously scrutinize mortgages and financing agreements, we do not believe that it will be necessary to require transactional approval of each financing and mortgage transaction. Accordingly, we propose to allow Non-Citizens, who are in the business of financing vessels, to obtain general approval of their standard loan agreement, provided that the standard loan covenants are acceptable to us. Section 356.21 allows a Non-Citizen Lender to get general approval for its standard loan documents if it does not include covenants that would convey impermissible control to the Non-Citizen. Once a Non-Citizen Lender has received approval for its standard loan agreements, it may enter into loans for Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels without having to obtain the approval of the Citizenship Approval Officer for each loan agreement. The general approval should reduce the paperwork required for lenders and owners, provide certainty regarding the loan covenants that will be considered permissible, streamline the process for financing Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, and increase the range of financing options for vessel owners, including small business entities.

A Non-Citizen Lender is required to use an approved Mortgage Trustee in order to hold a Preferred Mortgage on

the vessel. As with the above general approval for Non-Citizen Lenders, a Mortgage Trustee may obtain approval from the Citizenship Approval Officer on an annual basis to act as a Mortgage Trustee and will not be required to obtain transactional approval. The Mortgage Trustee will be required to simply provide an annual certification in the form of an Affidavit of United States Citizenship to demonstrate that it is still a Citizen of the United States, a current copy of its Articles of Incorporation and Bylaws, a copy of it most recent published report of condition, and a list of the vessels and lenders for which it is acting as Mortgage Trustee. The freedom for Mortgage Trustees to enter into agreements without being required to get transactional approval will minimize the burden of using a Mortgage Trustee, will provide certainty for vessel owners and foreign lenders regarding qualified Mortgage Trustees, and will simplify the process for owners to obtain foreign-financing.

We have also sought to minimize regulation of those vessel charters that the AFA allows. The AFA allows charters of Fish Processing Vessels and Fish Tender Vessels to Citizens and time charters and voyage charters to Non-Citizens of Fish Processing and Fish Tender Vessels that are not used for fishing, provided that such charters to Non-Citizens comply with the requirement that there not be an impermissible transfer of ownership and control to a Non-Citizen. While we considered requiring that all charters to Non-Citizens be submitted to us for review before being executed in order to ensure that there is not an impermissible transfer of control, we believe that it will impose less of a burden on vessel owners and charterers to authorize time charters and voyage charters to Non-Citizens without our prior approval. This is consistent with our present practice concerning non-fishing vessels. Our approval is conditioned upon the requirement that the charter agreement not include provisions that would convey an impermissible transfer of ownership or control to the Non-Citizen charterer and that a copy of the charter be sent to us within 30 days after execution to confirm that the charter is not in fact a demise of the vessel.

With regard to long-term or exclusive contracts for the sale of all or a significant portion of a vessel's catch, we again considered requiring that these agreements be approved on a transactional basis. However, because we do not wish to impose requirements on owners of Fishing Vessels that will interfere with their ability to enter into such agreements in a timely manner, we have elected to authorize such standard agreements, provided that they do not convey impermissible control to a Non-Citizen. We have determined that certain standard provisions do not convey impermissible control to Non-Citizens and may be included in these agreements. The NPRM will thus permit owners and bareboat charterers of Fishing Vessels to enter into these agreements with Non-Citizens in a timely manner without imposing additional costs or time consuming regulatory requirements.

Finally, with respect to management agreements, rather than requiring approval of each agreement to determine whether there is an impermissible transfer of ownership or control over the vessel to a Non-Citizen, we opted to establish a set of criteria for such agreements and to generally approve certain management agreements, provided that they are for technical and administrative services and are advisory in nature.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires us to consider whether our proposals will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under § 3 of the Small Business Act (15 U.S.C. 632). We believe that the cost of complying with these proposed regulations would be minimal. Therefore, MARAD certifies that this proposed rule will not have a significant impact on a substantial number of small businesses.

In our effort to determine whether there are a substantial number of small entities that may be impacted by this proposed rule, we issued an ANPRM entitled Eligibility of U.S.-Flag Vessels of 100 Feet or Greater to Obtain Fisheries Documents, 64 FR 24311 (May 6, 1999), and requested input from the public regarding the potential economic impact of the new citizenship and control requirements of the AFA. We specifically requested information regarding: (1) any unique issues within the fishing industry regarding the ownership, operation, management, control, financing, or mortgaging of Fishing Vessels; and, (2) costs relating to the new citizenship and control requirements that would likely be incurred by vessel owners, operators, lending institutions, Mortgagees, and other participants in the fishing industry. We conducted five public meetings during the sixty day comment period to obtain oral and written comments from the public. Although the comments in response to the ANPRM provided us with some valuable information, we only received three comments from entities that identified themselves as small entities, and we did not receive specific information regarding the economic impact to small entities that may result from this rulemaking.

This notice of proposed rulemaking may reasonably be expected to affect small businesses or entities that currently own documented Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels, that have financed such vessels or that are engaging in the fisheries of the United States with such vessels. The Small Business Administration defines businesses within the fishing industry that have annual receipts of $3 million or less as small businesses, 13 CFR 121.201. While we recognize that a number of vessel owners may be classified under the Small Business Administration regulations as small entities, at the present time we do not know whether this proposed rulemaking will have a significant economic impact on a substantial number of small entities. We estimate that of the nearly 33,000 vessels that have a fishery endorsement, less than 550 are 100 feet or greater in registered length and thus subject to this proposed rule. We further estimate that there are approximately 400 vessel owners within this group of 550; however, we have not been able to determine which owners might be classified as small businesses.

We estimate that less than 6 percent of the 550 vessels potentially subject to this proposed rule have less than the 75% United States Citizen ownership required by the AFA. It is possible that some of these vessel owners, who otherwise meet the 75% United States

citizen ownership requirement, may still be impacted by the proposed rule if the vessel is mortgaged to an entity that does not qualify to hold a Preferred Mortgage on the vessel or if the owner does not meet the requirement that control over 75% of the interest in the entity owning the vessel be vested in Citizens of the United States. However, even if the mortgage on the vessel is held by a lender that does not qualify, the lender will still be able to secure a Preferred Mortgage on the vessel through the use of an approved Mortgage Trustee. Based on our 30 years of experience using Mortgage Trustees in other programs, the use of a Mortgage Trustee imposes minimal cost and burden compared to the overall benefit of receiving a Preferred Mortgage as security for a loan. The use of a Mortgage Trustee will allow the Non-Citizen Lender to continue to receive a First Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Therefore, the new citizenship requirements for Mortgagees will have minimal economic impact.

In our regulatory analysis, we considered a variety of alternatives in order to find ways to minimize the regulatory burden on the affected public, specifically on small business entities, and to foster the ability of vessel owners to obtain financing for their vessels. A discussion of these alternatives is contained under the above section marked ''Executive Order 12866 (Regulatory Planning and Review)''.

If you believe that this rulemaking will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining in what way and to what degree this proposal will economically affect your business. In addition, if you think that your business qualifies as a small entity, and that further rulemaking will have a significant economic impact on your business, please submit a comment explaining how your business qualifies as a small entity, how this rulemaking may economically affect your business, and whether you are aware of other small entities that are similarly situated.

Environmental Impact Statement

We have analyzed this NPRM for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (''MAO'') 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact.

Paperwork Reduction Act

This NPRM establishes a new requirement for the collection of information. The Office of Management and Budget (''OMB'') will be requested to review and approve the information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). We request that commenters address in their comments whether the information collection in this proposal is necessary for the agency to properly perform its functions and will have practical utility, the accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

In accordance with the Paperwork Reduction Act, this notice announces MARAD's intentions to request approval for three years of the subject information collection to allow processing of applications to determine the eligibility of owners of vessels of 100 feet or greater in registered length to obtain a fishery endorsement to the vessel's documentation, to determine the eligibility of lending institutions to hold a Preferred Mortgage on a Fishing Vessel, a Fish Processing Vessel, or a Fish Tender Vessel of 100 feet or greater in registered length and to determine the eligibility of Mortgage Trustees to hold a Preferred Mortgage on such vessels for the benefit of a Non-Citizen Lender. Copies of this request may be obtained from the Office of Chief Counsel at the address given above under **ADDRESSES**.

Title of Collection: [Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation] 46 CFR Part 356.

Type of Request: New request for information.

OMB Control Number:

Form Number: None.

Expiration Date of Approval: Three years following approval by OMB.

Summary of the Collection of Information: Owners of vessels of 100 feet or greater in registered length who wish to obtain a fishery endorsement to the vessel's documentation will be required to file an Affidavit of United States Citizenship demonstrating that they comply with the requirements of § 2(c) of the 1916 Act, 46 App. U.S.C. 802(c) and with the requirements of 46 U.S.C. 12102(c). Other documentation to be submitted with the Affidavit includes a copy of the Articles of Incorporation, Bylaws or other comparable documents, a description of any management agreements entered into with Non-Citizens, a certification that any management contracts with Non-Citizens do not convey control in a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to a Non-Citizen, and a copy of any time charters or voyage charters with Non-Citizens.

Mortgagees who plan to finance vessels of 100 feet or greater in registered length that have a fishery endorsement or for which a fishery endorsement to the vessel's documentation is sought must submit an Affidavit of United States Citizenship to demonstrate that they comply with the United States Citizen ownership and control requirements of § 2(c) of the 1916 Act, 46 App. U.S.C. § 802(c), or in the case of a state or federally chartered financial institution, the Controlling Interest requirements of Section 2(b) of the 1916 Act. If a Mortgagee does not comply with the U.S. citizen ownership and control requirements set forth above and is deemed a Non-Citizen, it must use a Mortgage Trustee that qualifies as a Citizen of the United States to hold the Preferred Mortgage for the benefit of the Non-Citizen Lender. The Mortgage Trustee must file an application for approval as a Mortgage Trustee that includes an Affidavit of United States Citizenship demonstrating compliance with the United States Citizen ownership and control requirements of § 2(c) of the 1916 Act. In addition to the Affidavit of United States Citizenship, corporations and other entities must submit documents which demonstrate that the entity is organized and existing under the laws of the United States, such as Articles of Incorporation and Bylaws, or other comparable documents. Annually, owners of vessels, mortgagees and applicable mortgage trustees must submit prescribed citizenship information to MARAD's Citizenship Approval Officer.

A Person(s) alleged to have exceeded the authorized harvesting or processing caps provided for in § 210(e)(1) or (2) of the AFA will be required to submit to the Citizenship Approval Officer any information deemed relevant in determining whether such Person(s) have exceeded the cap.

Need and Use of the Information: The information collection will be used to verify statutory compliance with the United States Citizen ownership and control requirements under § 2(b) and § 2(c) of the 1916 Act and 46 U.S.C. 12102(c) for owners, charterers,

Mortgagees, and Mortgage Trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought. Section 203(c) of the AFA requires that we ''rigorously scrutinize'' transfers of ownership and control of vessels subject to 46 U.S.C. 12102(c) and that we pay particular attention to leases, charters, mortgages, financing and similar arrangements that may result in a transfer of control over an entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Without the information it would be impossible to know whether the vessels and vessel-owning entities are owned and controlled by Citizens of the United States as required by the AFA.

The information collected from Mortgagees and Mortgage Trustees will be used to verify that they qualify as United States Citizens as required by the AFA. A Mortgagee of Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels must either be a Citizen of the United States that complies with section 2(c) of the 1916 Act, or a state or federally chartered financial institution that complies with the Controlling Interest requirements of § 2(b) of the 1916 Act. A Mortgage Trustee, holding a mortgage for an entity that does not qualify as a Mortgagee under these requirements, must be a Citizen of the United States that meets the requirements of 46 U.S.C. 12102(c) and § 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and that is eligible to own a vessel with a fishery endorsement. Without the information it would be impossible to know whether the Mortgagees and Mortgage Trustees of these vessels are Citizens of the United States as required by the AFA.

The information collected from Person(s) alleged to have exceeded the percentage caps for harvesting or processing as provided in § 203(e)(1) or (2) of the AFA will be used to make a determination whether the Person(s) has violated section § 210(e) of the AFA.

Description of Respondents: Owners, Bareboat Charterers, Mortgagees, and Mortgage Trustees of vessels of 100 feet or greater in registered length for which a fishery endorsement to the Vessel's documentation is being sought. Person(s) alleged to have exceeded their percentage cap for harvesting or processing as provided in § 210(e)(1) or (2) of the AFA.

Annual Responses: Responses will be required on an occasional and an annual basis. Updates will be required during the year if there are changes to the ownership or financing of the vessel. There are approximately 550 vessels and 400 vessel owners that are subject to this regulation. Approximately 450 responses are expected from owners and bareboat charterers and less than 50 responses are expected from Mortgagees and Mortgage Trustees. We estimate that one request per year might be received alleging that Person(s) have exceeded their harvesting or processing caps.

Annual Burden: 1000 hours.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves the objective of the rule.

Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem. Because this NPRM would not affect the ability of organizations to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in this NPRM.

List of Subjects in 46 CFR Part 356

Citizenship, Fishery endorsement, Fishing vessels, Mortgages, Mortgage trustee, Penalties, Preferred mortgages.

Accordingly, we propose to add a new 46 CFR Part 356 to read as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

Subpart A—General Provisions

Sec.
356.1 Purpose.
356.3 Definitions.

Subpart B—Ownership and Control

356.5 Affidavit of U.S. Citizenship.
356.7 Methods of establishing ownership by United States Citizens.
356.9 Tiered ownership structures.
356.11 Impermissible control by a Non-Citizen.

Subpart C—Requirements for Vessel Owners

356.13 Information required to be submitted by vessel owners.
356.15 Filing of Affidavit of U.S. Citizenship.
356.17 Annual requirements for vessel owners.

Subpart D—Mortgages

356.19 Requirements to hold a Preferred Mortgage.
356.21 General approval of Non-Citizen lender's standard loan or mortgage agreements.
356.23 Restrictive loan covenants approved for use by Non-Citizen lenders.
356.25 Operation of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels by Mortgagees.

Subpart E—Mortgage Trustees

356.27 Mortgage Trustee requirements.
356.31 Maintenance of Mortgage Trustee approval.
356.37 Operation of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by a Mortgage Trustee.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

356.39 Charters.
356.41 Management agreements.
356.43 Long-term or exclusive sales and/or marketing contracts.
356.45 Advance of funds.

Subpart G—Special Requirements for Certain Vessels

356.47 Special requirements for large vessels.
356.49 Penalties.
356.51 Exemptions for specific vessels.

Subpart H—International Agreements

356.53 Conflicts with International Agreements.

Subpart I—Review of Harvesting and Processing Compliance

356.55 Review of compliance with harvesting and processing quotas.

Authority: 46 App. U.S.C. 12102; Public Law 105–277, Division C, Title II, Subtitle I, section 203 (46 App. U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; 46 CFR section 1.66.

Subpart A—General Provisions

§ 356.1 Purpose.

Part 356 implements U.S. Citizenship requirements of the American Fisheries Act of 1998, as amended, Title II, Division C, Pub. L. 105–277, for owners, Mortgage Trustees, and Mortgagees of

vessels of 100 feet or greater in registered length that have a fishery endorsement to the vessel's documentation or where a fishery endorsement to the vessel's documentation is being sought. This part also addresses ancillary matters of charters, management agreements, exclusive sales or marketing contracts, conflicts with international agreements, determinations regarding violations of harvesting or processing limits, and exceptions for certain vessels, vessel owners and Mortgagees from the general requirements of the rule.

§ 356.3 Definitions.

For the purpose of this part, when used in capitalized form:

(a) *1916 Act* refers to section 2 of the Shipping Act of 1916, as amended, 46 App. U.S.C. 802. The Controlling Interest requirements of the Shipping Act are found in section 2(b), 46 App. U.S.C. section 802(b). The citizenship requirements for eligibility to own a vessel with a fisheries endorsement are found in section 2(c), 46 App. U.S.C. section 802(c), and 46 U.S.C. section 12102(c).

(b) *AFA* means the American Fisheries Act of 1998, as amended, Title II, Division C, of Pub. L. 105–277;

(c) *Charter* means any agreement or commitment by which the possession or services of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel are secured for a period of time, or for one or more voyages, whether or not a bareboat charter of the vessel. A long-term or exclusive contract for the sale of all or a portion of a Fishing Vessel's catch is not considered a Charter.

(d) *Citizen of the United States, Citizen or U.S. Citizen:*

(1) Means an individual who is a Citizen of the United States, by birth, naturalization or as otherwise authorized by law, or an entity that in both form and substance, at each tier of ownership and in the aggregate, satisfies the requirements of 46 U.S.C. 12102(c) and 2(c) of the 1916 Act, 46 App. U.S.C. 802(c). In order to satisfy the statutory requirements an entity other than an individual must meet the requirements of paragraph (2) of this definition and the following criteria:

(i) The entity must be organized under the laws of the United States or of a State;

(ii) Seventy five percent (75%) of the ownership and control in the entity must be owned by and vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any Non-Citizen;

(iii) No arrangement may exist, whether through contract or any understanding, that would allow more than 25% of the voting power of the entity to be exercised, directly or indirectly, in behalf of any Non-Citizen; and

(iv) Control of the entity, by any other means whatsoever, may not be conferred upon or permitted to be exercised by a Non-Citizen.

(2) Other criteria that must be met by entities other than individuals include:

(i) In the case of a corporation:

(A) The chief executive officer, by whatever title, and chairman of the board of directors and all officers authorized to act in the absence or disability of such persons must be Citizens of the United States; and

(B) No more of its directors than a minority of the number necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) All of the members are Citizens of the United States;

(B) The chief executive officer, by whatever title, and the chairman of the board of directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(C) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or a partnership; and,

(B) Each coventurer is a Citizen of the United States;

(v) In the case of a Trust that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel:

(A) The Trust is domiciled in the United States or a State;

(B) The Trustee is a Citizen of the United States; and

(C) All beneficiaries of the trust are persons eligible to document vessels pursuant to the requirements of 46 U.S.C. 12102;

(vi) In the case of a mortgage Trust:

(A) The Trust is domiciled in the United States or a State;

(B) The Mortgage Trustee is a Citizen of the United States; and,

(C) The Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to § 356.5.

(vii) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to a Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC.

(e) *Citizenship Approval Officer* means MARAD's Citizenship Approval Officer within the Office of Chief Counsel. The Citizenship Approval Officer's address is: Maritime Administration, United States Department of Transportation, Citizenship Approval Officer, MAR–220, Room 7232, 400 7th Street, S.W., Washington, DC 20590.

(f) *Controlling Interest:*

(1) Means an entity that in both form and substance, at each tier of ownership and in the aggregate, satisfies the requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. section 802(b). In order to satisfy the statutory requirements, an entity other than an individual must meet the requirements of paragraph (2) of this definition and the following criteria:

(i) The entity must be organized under the laws of the United States or of a State;

(ii) A majority of the ownership and control in the entity must be owned by and vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any Non-Citizen;

(iii) No arrangement may exist, whether through contract or any understanding, that would allow a majority of the voting power of the entity to be exercised, directly or indirectly, in behalf of any Non-Citizen; and

(iv) Control of the entity, by any other means whatsoever, may not be conferred upon or permitted to be exercised by a Non-Citizen.

(2) Other criteria that must be met by entities other than an individual include:

(i) In the case of a corporation:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(ii) In the case of a partnership all general partners are Citizens of the United States;

(iii) In the case of an association:

(A) The Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors (or equivalent committee or body) and all officers authorized to act in their absence or disability are Citizens of the United States; and,

(B) No more than a minority of the number of its directors, or equivalent, necessary to constitute a quorum are Non-Citizens;

(iv) In the case of a joint venture:

(A) It is not determined by the Citizenship Approval Officer to be in effect an association or partnership; and

(B) A majority of the equity is owned by and vested in Citizens of the United States free and clear of any trust or fiduciary obligation in favor of any Non-Citizen;

(v) In the case of a mortgage trust:

(A) The Trust is domiciled in the United States or a State;

(B) The Mortgage Trustee is a Citizen of the United States;

(C) The Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant § 356.5;

(vi) In the case of a Limited Liability Company (LLC) that is not found to be in effect a general partnership requiring all of the general partners to be Citizens of the United States:

(A) Any Person elected to manage the LLC or who is authorized to bind the LLC, and any Person who holds a position equivalent to the Chief Executive Officer, by whatever title, and the Chairman of the Board of Directors in a corporation and any Persons authorized to act in their absence are Citizens of the United States; and,

(B) Non-Citizens do not have authority within a management group, whether through veto power, combined voting, or otherwise, to exercise control over the LLC;

(g) *Fishing Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially engages in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation or an activity that can reasonably be expected to result in the planting, cultivating, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation;

(h) *Fish Processing Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling;

(i) *Fish Tender Vessel* means a vessel of 100 feet or greater in registered length that has or for which the owner is seeking a fishery endorsement to the vessel's documentation and that commercially supplies, stores, refrigerates, or transports (except in foreign commerce) fish, fish products, or materials directly related to fishing or the preparation of fish to or from a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel or a fish processing facility;

(j) *Harvest* means to commercially engage in the catching, taking, or harvesting of fish or fishery resources or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish or fishery resources;

(k) *MARAD* means the Maritime Administration within the United States Department of Transportation. The terms ''we, our, and us'' may also be used to refer to the Maritime Administration;

(l) *Mortgagee* means a Person to whom a Fishing Vessel or other property is mortgaged. (See the definition of Non-Citizen Lender and Preferred Mortgage in this section)

(m) *Mortgage Trustee*, for purposes of holding a Preferred Mortgage on a Fishing Vessel, means a corporation that:

(1) Is organized and doing business under the laws of the United States or of a State;

(2) Is a Citizen of the United States;

(3) Is authorized under those laws to exercise corporate trust powers;

(4) Is subject to supervision or examination by an official of the United States Government, or of a State;

(5) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(6) Meets any other requirements prescribed by the Citizenship Approval Officer.

(n) *Non-Citizen* means a Person who is not a Citizen of the United States within the meaning of paragraph (d) of this section, 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c).

(o) *Non-Citizen Lender* means a lender that does not qualify as a Citizen of the United States.

(p) *Person* includes individuals, corporations, partnerships, joint ventures, associations, limited liability companies, Trusts, and other entities existing under or authorized by the laws of the United States or of a State or, unless the context indicates otherwise, of any foreign country.

(q) *Preferred Mortgage* means a mortgage on a Fishing Vessel that has as the Mortgagee:

(1) A person eligible to own a vessel with a fishery endorsement under 46 U.S.C. 12102(c);

(2) A state or federally chartered financial institution that satisfies the Controlling Interest criteria of section 2(b) of the 1916 Act (46 App. U.S.C. 802(b)) and paragraph (f) of this section; or

(3) A person that complies with the provisions of section 12102(c)(4) of title 46, United States Code.

(r) *State* means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(s) *Submitted* means sent by mail and postmarked on that date, or sent by another delivery service or by electronic means, including E-mail and facsimile, and marked with an indication of the date equivalent to a postmark;

(t) *Trust* means:

(1) In the case of ownership of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, a trust that is domiciled in and existing under the laws of the United States or of a State, of which the Trustee is a Citizen of the United States, and 100% of the interest in the Trust is held for the benefit of a Citizen of the United States; or

(2) In the case of a mortgage trust, a trust that is domiciled in and existing under the laws of the United States, or of a State, of which the Mortgage Trustee is a Citizen of the United States and for which the Mortgage Trustee is authorized to act on behalf of Non-Citizen beneficiaries pursuant to §§ 356.27–356.37.

(u) *United States,* when used in the geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States; when used in other than the geographic sense, it means the United States Government.

(v) *United States Government* means the Federal Government acting by or through any of its departments or agencies.

Subpart B—Ownership and Control

§ 356.5 Affidavit of U.S. Citizenship.

(a) In order to establish that a corporation or other entity is a Citizen of the United States within the meaning of section 2(c) of the 1916 Act, or where applicable, section 2(b) of the 1916 Act, the form of Affidavit is hereby prescribed for execution in behalf of the owner, charterer, Mortgagee, or Mortgage Trustee of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. Such Affidavit must include information required of parent corporations and other stockholders whose stock ownership is being relied upon to establish that the requisite ownership in the entity is owned by and vested in Citizens of the United States. A certified copy of the Articles of Incorporation and Bylaws, or comparable corporate documents, must be submitted along with the executed Affidavit.

(b) This Affidavit form set forth in paragraph (d) of this section may be modified to conform to the requirements of vessel owners, Mortgagees, or Mortgage Trustees in various forms such as partnerships, limited liability companies, etc. A copy of an Affidavit of U.S. Citizenship modified appropriately, for limited liability companies, partnerships (limited and general), and other entities is available on MARAD's internet home page at http://marad.dot.gov.

(c) As indicated in § 356.17, in order to renew annually the fishery endorsement on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, the owner must submit annually to the Citizenship Approval Officer evidence of U.S. Citizenship within the meaning of section 2(c) of the 1916 Act and 46 App. U.S.C. 12102(c).

(d) The prescribed form of the Affidavit of U.S. Citizenship is as follows:

State of _____ County of _____ SS:
I, _____, (Name) of _____, (Residence address) being duly sworn, depose and say:

1. That I am the _____ (Title of office(s) held) of _____, (Name of corporation) a corporation organized and existing under the laws of the State of _____ (hereinafter called the ''Corporation''), with offices at _____, (Business address) in evidence of which incorporation a certified copy of the Articles or Certificate of Incorporation (or Association) is filed herewith (or has been filed) together with a certified copy of the corporate Bylaws. [Evidence of continuing U.S. citizenship status, including amendments to said Articles or Certificate and Bylaws, should be filed within 30 days after the annual meeting of the stockholders or annually, within 30 days after the original affidavit if there has been no meeting of the stockholders prior to that time.];

2. That I am authorized by and in behalf of the Corporation to execute and deliver this Affidavit of U.S. Citizenship;

3. That the names of the Chief Executive Officer, by whatever title, the Chairman of the Board of Directors, all Vice Presidents or other individuals who are authorized to act in the absence or disability of the Chief Executive Officer or Chairman of the Board of Directors, and the Directors of the Corporation are as follows: [1]

_____
Name

_____
Title

_____
Date and Place of Birth

(The foregoing list should include the officers, whether or not they are also directors, all directors, whether or not they are also officers.) Each of said individuals is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law, except (give name and nationality of all Non-Citizen officers and directors, if any). The By-laws of the Corporation provide that ____ (Number) of the directors are necessary to constitute a quorum; therefore, the Non-Citizen directors named represent no more than a minority of the number necessary to constitute a quorum.

4. Information as to stock, where Corporation has 30 or more stockholders: [2]

That I have access to the stock books and records of the Corporation; that said stock books and records have been examined and disclose (a) that, as of _____, (Date) the Corporation had issued and outstanding ____ (Number) shares of ____, (Class) the only class of stock of the Corporation issued and outstanding [if such is the case], owned of record by ____ (Number) stockholders, said number of stockholders representing the ownership of the entire issued and outstanding stock of the Corporation, and (b) that no stockholder owned of record as of said date five per centum (5%) or more of the issued and outstanding stock of the Corporation of any class. [If different classes of stock exist, give the same information for each class issued and outstanding, showing the monetary value and voting rights per share in each class. If there is an exception to the statement in clause (b), the name, address, and citizenship of the stockholder and the amount and class of stock owned should be stated and the required citizenship information on such stockholder must be submitted.] That the registered addresses of ____ owners of record of ____ shares of the issued and outstanding ____ (Class) stock of the Corporation are shown on the stock books and records of the Corporation as being within the United States, said ____ shares being ____ per centum (____%) of the total number of shares of said stock (each class). [The exact figure as disclosed by the stock books of the corporation must be given and the per centum figure must not be less than 65 per centum for a state or federally chartered financial institution holding a Preferred Mortgage, or not less than 95 per centum for an entity that is demonstrating ownership in a vessel for which a fishery endorsement is sought or a Mortgage Trustee. These per centum figures apply to corporate stockholders as well as to the primary corporation.] (The same statement should be made with reference to each class of stock, if there is more than one class.) or

4. Information as to stock, where Corporation has less than 30 stockholders: That the information as to stock ownership, upon which the Corporation relies to establish that 75% of the stock ownership is vested in Citizens of the United States, is as follows:

_____
Name of Stockholder

_____
Number of shares owned (each class)

_____
Percentage of shares owned (each class)

and that each of said individual stockholders is a Citizen of the United States by virtue of birth in the United States, birth abroad of U.S. citizen parents, by naturalization during minority through the naturalization of a parent, by marriage (if a woman) to a U.S. citizen prior to September 22, 1922, or as otherwise authorized by law. Note: If a corporate stockholder, give information with respect to State of incorporation, the names of the officers, directors, and stockholders and the appropriate percentage of shares held, with statement that they are all U.S. citizens. Nominee holders of record of 5 percent or more of any class of stock and the beneficial owners thereof should be named and their U.S. citizenship information submitted to MARAD.

5. That 75% of the interest in (each) said Corporation, as established by the [3] information hereinbefore set forth, is owned by Citizens of the United States; that the title to 75% of the stock of (each) of the stock of (each) said Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that more than 25% the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is any interest in said Corporation in excess of 25% conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

Note: For state or federally chartered financial institutions acting as Mortgagees, the Controlling Interest language, which is set forth below, is applicable.

5. That the Controlling Interest in (each) said Corporation, as established by the information hereinbefore set forth, is owned by Citizens of the United States; that the title to a majority of the stock of (each) said

[1] Offices that are currently vacant should be noted when listing Officers and Directors in the Affidavit.

[2] Strike inapplicable paragraph 4.

[3] Strike inappropriate Paragraph 5.

Corporation is vested in Citizens of the United States free from any trust or fiduciary obligation in favor of any person not a Citizen of the United States; that such proportion of the voting power of (each) said Corporation is vested in Citizens of the United States; that through no contract or understanding is it so arranged that the majority of the voting power of (each) said Corporation may be exercised, directly or indirectly, in behalf of any person who is not a Citizen of the United States; and that by no means whatsoever, is control of (each) said Corporation conferred upon or permitted to be exercised by any person who is not a Citizen of the United States; and

6. That affiant has carefully examined this affidavit and asserts that all of the statements and representations contained therein are true to the best of his knowledge, information, and belief.

_____

(Name and title of affiant)

(Signature of affiant)

Date

Penalty for False Statement: A fine or imprisonment, or both, are provided for violation of the proscriptions contained in 18 U.S.C. 1001 (see also 18 U.S.C. 286, 287).

(e) The format for an Affidavit of United States Citizenship, modified appropriately for limited liability companies, partnerships, etc., will be available from the Citizenship Approval Officer and on MARAD's internet web site at *http://www.marad.dot.gov.*

(f) The same criteria should be observed in obtaining information to be furnished for stockholders named (direct ownership of required percentage of shares of stock of each class) in the Affidavit as those observed for the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. If, on the other hand, the ''fair inference rule'' is applied with respect to stock ownership as outlined in 46 CFR 356.7(c), the extent of U.S. Citizen ownership of stock should be ascertained in the requisite percentage (65 percent for state or federally chartered financial institutions and 95 percent for Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel owners, bareboat charterers, trustees, as well as entities owning 5 percent or more of the stock of owners, bareboat charterers. Any entity that must establish its U.S. citizenship has to submit proof of U.S. citizenship of any five percent stockholder of each class of stock in order that the veracity of the statutory statements made in the Affidavit (paragraph 5) may be relied upon by MARAD.

(g) It shall be incumbent upon the parties filing affidavits under this part to notify the Citizenship Approval Officer in writing within 30 calendar days of any changes in information last furnished with respect to the officers, directors, and stockholders, including 5 percent or more stockholders of the issued and outstanding stock of each class, together with information concerning their citizenship status. If other than a corporation, comparable information must be filed by other entities owning Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels, including any entity whose ownership interest is being relied upon to establish 75 percent ownership by Citizens of the United States.

(h) If additional material is determined to be essential to clarify or support the evidence of U.S. citizenship, such material shall be furnished by the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel upon request by the Citizenship Approval Officer.

§ 356.7 Methods of establishing ownership by United States Citizens.

(a) An entity may demonstrate that the interest in the entity (75% for Citizens of the United States or 51% for entities meeting the Controlling Interest requirements) is owned by Citizens of the United States either by direct proof or through the fair inference method depending on the size of the entity.

(b) The ''direct proof'' method is used for closely held companies that have 30 or fewer stockholders. Under the direct proof method, the following information must be set forth in paragraph four of the Affidavit of U.S. Citizenship:

(1) The identity of the holders of stock or other equitable interests;

(2) The amount of stock or interest that each stockholder owns;

(3) A representation as to the citizenship of the stockholder; and,

(4) If the stockholder is a corporation or other entity, the names and citizenship of officers, directors, stockholders, etc. must be set out in the Affidavit of U.S. Citizenship.

(c) The ''fair inference method'' is used by corporations whose stock is publicly traded (more than 30 stockholders). Use of the fair inference method requires that:

(1)(i) At least 95% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 75% ownership by U.S. Citizens, or

(ii) At least 65% of the stock (each class) of the corporation be held by Persons having a registered U.S. address in order to infer at least 51% ownership by U.S. Citizens in the case of a state or federally chartered financial institution acting as a Mortgagee; and,

(2) Disclosure be made in the Affidavit of U.S. Citizenship of the names and citizenship of any stockholders who holds five percent or more of the corporation's stock (including all classes of stock, voting and non-voting), officers, and directors.

(d) If the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel is consecutively owned by several ''parent'' corporations, the facts revealing the stock ownership of each entity must be set forth in the Affidavit of U.S. Citizenship.

§ 356.9 Tiered ownership structures.

(a) A Non-Citizen may not own or control, either directly through the first tier of ownership or in the aggregate through an interest in other entities at various tiers, more than 25% of the interest in an entity which owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The prohibition against any Non-Citizen owning or controlling more than 25%, in the aggregate, of the interest in an entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel means, for example, that:

(1) A Non-Citizen that owns or controls a 25% stake in the ownership entity of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel at the first tier may not have any interest whatsoever in any entity that is being relied upon to establish the required 75% U.S. Citizen ownership;

(2) A Non-Citizen that owns or controls less than a 25% stake at the first tier may participate in the ownership and control of other entities that are being relied upon to establish the required 75% U.S. Citizen ownership and control at the first tier. However, that Non-Citizen's total ownership and control of the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may not exceed 25% in the aggregate as computed by MARAD; and,

(3) Where a Non-Citizen owns or controls 25% of the interest in the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel at the first tier and is thus precluded from owning or controlling any interest in an entity being relied upon to establish the required 75% U.S. Citizen ownership and control, other unrelated Non-Citizens may still participate in the ownership structure at subsequent tiers; provided, that their interest does not exceed 25% in the aggregate and that each entity meets the 75% U.S. ownership and control requirement.

(b) The Citizenship Approval Officer may determine that an ownership structure with a large number of tiers

does not qualify as a Citizen of the United States if through excessive tier structures, Non-Citizen participation is deemed to dilute the U.S. ownership and control of the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel to an unacceptable level.

§ 356.11 Impermissible control by a Non-Citizen.

(a) An impermissible transfer of control exists where a Non-Citizen, whether by agreement, contract, influence, or any other means whatsoever:

(1) Has the right to direct the business of the entity which owns the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) Has the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of the entity which owns the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(3) Has the right to direct the transfer, operation, or manning of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(4) Has the right to unduly restrict the day to day business activities and management policies of the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel through loan covenants or other means;

(5) Has the right to derive through a minority shareholder a disproportionate amount of the economic benefits from the ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(6) Has the right to control the management of or to be a controlling factor in the entity owning a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(7) Has the right to cause the sale of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, other than through approved loan covenants where there is a Preferred Mortgage on the vessel;

(8) Absorbs all of the costs and normal business risks associated with ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(9) Has the responsibility for the procurement of insurance on the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or assumes any liability in excess of insurance coverage; or,

(10) Has the ability through any other means whatsoever to control the entity that owns a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(b) In addition to the actions in paragraph (a) of this section that are considered absolute indicia of control, we will consider other factors which, in combination with other elements of foreign involvement, may be deemed impermissible control. The following factors may be considered indicia of control:

(1) If a Non-Citizen minority stockholder takes the leading role in establishing an entity that will own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) If a Non-Citizen has the right to preclude the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel from engaging in other business activities;

(3) If a Non-Citizen and owner use the same legal representation, accounting firm, etc.;

(4) If a Non-Citizen and owner share the same office space, phones, administrative support, etc.;

(5) If a Non-Citizen absorbs many of the costs and normal business risks associated with ownership and operation of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(6) If a Non-Citizen provides the start up capital for the owner or bareboat charterer on less than an arms-length basis;

(7) If a Non-Citizen has the general right to inspect the books and records of the owner or bareboat charterer of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel; or,

(8) If the owner or bareboat charterer uses the same insurance agent or broker of any Non-Citizen with whom the owner or a bareboat charterer has entered into a mortgage, long-term or exclusive sales or marketing agreement, unsecured loan agreement, or management agreement.

(c) In most cases, any single factor listed in paragraph (b) of this section will not be sufficient to deem an entity a Non-Citizen. However, a combination of several factors listed in paragraph (b) of this section may increase our concern as to whether the entity complies with the U.S. Citizen ownership and control provisions of the AFA and any single factor listed in paragraph (b) of this section may be the basis for a request from us for further information.

(d) If we have a concern regarding control by a Non-Citizen, we will notify the entity of the concern and work with the entity toward a satisfactory resolution. Resolution of any control issues may result in a request by us for additional information to clarify the intent of the provision or to amend or delete the provision in question.

(e) Information that is specifically required to be submitted for our consideration is set out in § 356.13. However, in determining whether an entity has control over a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, we may review any contract or agreement that may, by any means whatsoever, result in a transfer of control to a Non-Citizen.

Subpart C—Requirements for Vessel Owners

§ 356.13 Information required to be submitted by vessel owners.

(a) In order to be eligible to document a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel with a fishery endorsement, the entity that owns the vessel must submit documentation to demonstrate that 75 percent (75%) of the interest in such entity is owned and controlled by Citizens of the United States. Unless otherwise exempted, the following documents must be submitted to the Citizenship Approval Officer in support of a request for a determination of U.S. Citizenship:

(1) An Affidavit of U.S. Citizenship. This affidavit, set out in § 356.5, must contain all required facts, at all tiers of ownership, needed for determining the citizenship of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(2) A certified copy of the Articles of Incorporation and Bylaws of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, and any parent corporation, must be submitted. The certification must be by the Secretary of State in which the corporation is incorporated or by the Secretary of the corporation. For entities other than corporations, comparable certified documents must be submitted. For example, for a limited liability company, a copy of the Certificate of Formation filed with a State must be submitted, along with a certified copy of the Limited Liability Company Operating Agreement;

(3) An Affidavit of U.S. Citizenship for each charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, with the exception of time or voyage charterers of Fish Processing Vessels and Fish Tender Vessels permitted under § 356.39(b)(2);

(4) A copy of any time charter or voyage charter to a Non-Citizen of a Fish Tender Vessel or Fish Processing Vessel;

(5) Any loan agreements or other financing documents applicable to a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel where the lender

has not been granted approval from the Citizenship Approval Officer pursuant to § 356.21 to enter into loans without transactional approval from MARAD;

(6) A description of any operating and/or management agreements entered into by the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel accompanied by a representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen;

(7) Identification of any sales, purchase or marketing agreements, including the parties to those agreements, that relate to the sale or purchase of all or a significant portion of a vessel's catch and copies of such agreements if the agreement contains provisions that could convey control to a Non-Citizen other than those expressly authorized in § 356.43;

(8) Any stockholder's agreement, voting trust agreements, or any other pooling agreements, including any proxy appointment, relating to the ownership of all classes of stock, whether voting or non-voting of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation or other stockholder whose stock is being relied upon to establish 75 percent U.S. Citizen ownership;

(9) Any agreements relating to an option to buy or sell stock or other comparable equity interest in the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or any agreement that restricts the sale of such stock or equity interests in the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation or other stockholder whose stock is being relied upon to establish 75 percent U.S. Citizen ownership;

(10) Any documents relating to a merger, consolidation, liquidation or dissolution of the owner of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, including any parent corporation; and

(11) Disclosure of any interlocking directors or other officials by and between the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel (including any parent corporation) and any Non-Citizen minority stockholder of the owner and any parent corporation. This requirement is also applicable to any lender, purchaser of fish catch, or other entity that is a Non-Citizen.

(b) In the event the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel enters into any agreement reflected in any of the documents set forth in paragraph (a) of this section after the submission of the Affidavit of U.S. Citizenship, the owner or bareboat charterer must notify the Citizenship Approval Officer within 30 calendar days. Failure to notify the Citizenship Approval Officer of such agreements within the prescribed time may result in the vessel owner being deemed ineligible to document the vessel with a fishery endorsement.

§ 356.15 Filing of affidavit of U.S. Citizenship.

(a) Between October 1, 2000, and June 1, 2001, the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may obtain a letter ruling from the Citizenship Approval Officer prior to the effective date of the regulations that the owner is a U.S. Citizen eligible to own a vessel with a fishery endorsement. The owner must submit to the Citizenship Approval Officer a request for a letter ruling that includes an Affidavit of U.S. Citizenship and all other documentation required by § 356.13. The Citizenship Approval Officer will issue a letter ruling within 120 days of receiving all applicable documents.

(b) An owner that receives a letter ruling pursuant to paragraph (a) of this section must submit, within 10 business days prior to October 1, 2001, a certification that the information contained in the Affidavit of U.S. Citizenship and in documents submitted in support of the request for a letter ruling remains true and accurate. If changes in the information have occurred between the time of the request for the letter ruling and the time of the certification, the owner must notify the Citizenship Approval Officer of those changes as required by § 356.5 and § 356.17. The owner is still required to inform the Citizenship Approval Officer of any changes as they occur as required by § 356.17 and not merely at the time of the certification.

(c) An owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that does not request a letter ruling prior to June 1, 2001, and who wishes to be eligible to obtain a fishery endorsement on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on October 1, 2001, must submit the required Affidavit of U.S. Citizenship and all other documentation required by § 356.13 to the Citizenship Approval Officer no later than June 1, 2001. If a completed Affidavit of U.S. Citizenship and all required documentation is not submitted by June 1, 2001, the owner may not be considered eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on October 1, 2001, and the Vessel may be prohibited from operating in the fisheries of the United States until an eligibility determination is made by the Citizenship Approval Officer.

(d) New owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels after October 1, 2001, must file the Affidavit of U.S. Citizenship and other required documentation with the Citizenship Approval Officer in order for the Citizenship Approval Officer to make a determination as to whether the owner is eligible for a fishery endorsement to the vessel's documentation.

§ 356.17 Annual requirements for vessel owners.

(a) An owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit a certification in the form of an Affidavit of United States Citizenship to the Citizenship Approval Officer on an annual basis as provided in paragraph (b) of this section. This annual certification requirement does not excuse the owner from the requirements of § 356.5 to notify the Citizenship Approval Officer throughout the year when changes in the citizenship information occur.

(b) For owners that hold annual meetings, the annual certification must be filed within 30 calendar days of the annual meeting. For owners that do not hold an annual meeting, the annual filing date will be the date of the original filing of the Affidavit of U.S. Citizenship with the Citizenship Approval Officer.

(c) Failure to file the annual certification in a timely manner may result in the expiration of the vessel's fishery endorsement, which will prohibit the vessel from operating in the fisheries of the United States.

Subpart D—Mortgages

§ 356.19 Requirements to hold a Preferred Mortgage.

(a) In order for Mortgagee to be eligible to obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, it must be:

(1) A Citizen of the United States;

(2) A state or federally chartered financial institution that complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b); or

(3) A Mortgage Trustee that qualifies as a Citizen of the United States and that has satisfied the requirements of §§ 356.27–356.31.

(b) The Mortgagee must file an Affidavit of United States Citizenship demonstrating that it complies with the citizenship requirements that correspond to the provisions of paragraph (a) of this section under which the Mortgagee qualifies.

(c) In addition to the Affidavit of U.S. Citizenship, a certified copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents must be submitted to the Citizenship Approval Officer.

(d) A Preferred Mortgagee must provide an annual certification to the Citizenship Approval Officer in the form of an Affidavit of United States Citizenship evidencing its continued status as a Citizen of the United States or, if a state or federally chartered financial institution, that it complies with the Controlling Interest requirements of section 2(b) of the 1916 Act, 46 App. U.S.C. 802(b), during the period that it holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel. The certification must be submitted within 30 days of the one year anniversary of the original filing.

§ 356.21 General approval of Non-Citizen lender's standard loan or mortgage agreements.

(a) A Non-Citizen Lender that is a financial institution engaged in the business of financing Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels may apply to the Citizenship Approval Officer for general approval of its standard loan and mortgage agreements for such vessels. In order to obtain general approval for its standard loan and mortgage agreements, a Non-Citizen Lender using an approved Mortgage Trustee must submit to the Citizenship Approval Officer:

(1) A copy of its standard loan or mortgage agreement for Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels, including all covenants that may be included in the loan or mortgage agreement; and,

(2) A certification that it will not use covenants or restrictions in the loan or mortgage agreement outside of those approved by the Citizenship Approval Officer without obtaining the prior approval of the Citizenship Approval Officer.

(b) A Non-Citizen Lender that receives general approval may enter into loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels without prior approval from us of each individual loan or mortgage; provided, that the loan or mortgage conforms to the standard agreement approved by the Citizenship Approval Officer and does not include any other covenants that have not been approved by the Citizenship Approval Officer.

(c) The Non-Citizen Lender must provide an annual certification to the Citizenship Approval Officer certifying that all loans and mortgages on Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels entered into under this general approval conform to the standard agreement approved by us and do not contain covenants that were not reviewed and approved by the Citizenship Approval Officer. The certification must be submitted within 30 days of the one year anniversary of the previous approval.

(d) If the Non-Citizen Lender wishes to use covenants that were not approved pursuant to this section, it must submit the new covenants to the Citizenship Approval Officer for approval.

(e) A Non-Citizen Lender that has received general approval for its lending program and that uses covenants in a loan or mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that have not been approved by the Citizenship Approval Officer or that files a false certification with the Citizenship Approval Officer will be subject to loss of its general approval and civil and criminal penalties pursuant to 18 U.S.C. § 1001. In addition, the Citizenship Approval Officer may determine that there has been an impermissible transfer of control to a Non-Citizen and the vessel owner is not eligible to document the vessel with a fishery endorsement.

§ 356.23 Restrictive loan covenants approved for use by non-citizen lenders.

(a) We approve the following standard loan covenants which may restrict the activities of the borrower without the lender's consent and which may be included in loan agreements or other documents, between an owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel and an unrelated Non-Citizen Lender that is using an approved Mortgage Trustee to hold the mortgage and debt instrument for the benefit of the Non-Citizen Lender, so long as the lender's consent is not unreasonably withheld:

(1) Borrower cannot sell part or all of its assets;

(2) Borrower cannot merge, consolidate, reorganize, dissolve, or liquidate;

(3) Borrower cannot undertake new borrowing or contingent liabilities;

(4) Borrower cannot insure, guaranty or become otherwise liable for debt obligations of any other entity, Person, etc.;

(5) Borrower cannot Charter or lease a vessel which is collateral for the loan;

(6) Borrower cannot incur liens, except any permitted liens that may be set forth in the loan or other financing documents;

(7) Borrower must limit its investments to marketable investments guaranteed by the United States or a State, or commercial paper with the highest rating of a generally recognized rating service;

(8) Borrower cannot make structural alterations or any other major alteration to the vessel;

(9) Borrower, if in arrears in its debt obligations to the lender, cannot make dividend payments on its capital stock; and,

(10) Borrower, if in arrears in its debt obligations to the lender, may not make excessive contributions to pension plans, payment of employee bonuses, or make excessive contributions to stock option plans, or provide other major fringe benefits in terms of dollar amount to its employees, officers, and directors, such as loans, etc.

(b) The mortgage may not include covenants that allow the Mortgagee to operate the vessel except as provided for in § 356.25.

§ 356.25 Operation of fishing vessels, fish processing vessels, or fish tender vessels by mortgagees.

(a) A Mortgagee that has demonstrated to MARAD that it qualifies as a Citizen of the United States and is eligible to own a vessel with a fishery endorsement may operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(b) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot operate, or cause operation of, the vessel in the fisheries of the United States. Except as provided in paragraph (c) of this section, the vessel may not be operated for any purpose without the prior written approval of the Citizenship Approval Officer.

(c) A Mortgagee not eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may operate the vessel for a non-commercial purpose to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes; provided, that the vessel is operated under the command of a Citizen of the United States and for no longer than 15 calendar days.

(d) A Mortgagee that is holding a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel but that is not eligible to own a Fishing Vessel, Fish Processing Vessel,

or Fish Tender Vessel may take possession of the vessel in the event of default by the mortgagor other than by foreclosure pursuant to 46 U.S.C. 31329, if provided for in the mortgage or a related financing document. However, the vessel may not be operated, or caused to be operated in commerce, except as provided in paragraph (c) of this section or with the approval of the Citizenship Approval Officer.

(e) A Non-Citizen Lender that has brought a civil action in rem for enforcement of a Preferred Mortgage lien on a Citizen-owned Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel pursuant to 46 U.S.C. 31325(b)(1) may petition the court pursuant to 46 U.S.C. 31325(e)(1) for appointment of a receiver, and, if the receiver is a Person eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, to authorize the receiver to operate the mortgaged vessel pursuant to terms and conditions consistent with 46 CFR part 356. If the receiver is not a Citizen of the United States that meets the requirements of section 2(c) of the 1916 Act, 46 App. U.S.C. 802(c), and 46 U.S.C. 12102(c), the vessel may not be operated in the fisheries of the United States.

Subpart E—Mortgage Trustees

§ 356.27 Mortgage trustee requirements.

(a) A lender who does not qualify as a Citizen of the United States or is not a state or federally chartered financial institution that meets the Controlling Interest requirements of section 2(b) of the 1916 Act and § 356.3(f) can obtain a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by using an approved Mortgage Trustee to hold the mortgage and the debt instrument that the mortgage is securing.

(b) In order to qualify as an approved Mortgage Trustee, the Mortgage Trustee must:

(1) Qualify as a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) Be organized as a corporation and doing business under the laws of the United States or of a State;

(3) Be authorized under the laws of the United States or of the State under which it is organized to exercise corporate trust powers;

(4) Be subject to supervision or examination by an official of the United States Government, or of a State;

(5) Have a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(6) Meet any other requirements prescribed by the Citizenship Approval Officer.

(c) The Mortgage Trustee must submit to the Citizenship Approval Officer the following documentation in order to be an approved Mortgage Trustee:

(1) An application for approval as a Mortgage Trustee as set out in paragraph (g) of this section;

(2) An Affidavit of U.S. Citizenship setting forth the required information necessary to determine that the applicant qualifies as a Citizen of the United States;

(3) A certified copy of the Articles of Incorporation and Bylaws, or other comparable documents;

(4) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(5) A certification that the Mortgage Trustee is authorized under the laws of the United States or of a State to exercise corporate trust powers and is subject to supervision or examination by an official of the United States or of a State;

(d) Any right set forth in a mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel cannot be issued, assigned, or transferred to a person who is not eligible to be a Mortgagee without the approval of the Citizenship Approval Officer.

(e) Mortgage Trustees approved by the Citizenship Approval Officer must not assume any fiduciary obligations in favor of Non-Citizen lenders that are in conflict with the U.S. Citizen ownership and control requirements set forth in the AFA, without the approval of the Citizenship Approval Officer.

(f) We will periodically publish a list of Approved Mortgage Trustees in the **Federal Register**, but current information as to the status of any particular Mortgage Trustee must be obtained from the Citizenship Approval Officer.

(g) An application to be approved as a Mortgage Trustee should include the following: The undersigned (the ''Mortgage Trustee'') hereby applies for approval as Mortgage Trustee pursuant to 46 U.S.C. 12102(c)(4) and the Regulation (46 CFR part 356), prescribed by the Maritime Administration (''MARAD''). All terms used in this application have the meaning given in the Regulation.

In support of this application, the Mortgage Trustee certifies to and agrees with MARAD as hereinafter set forth:

The Mortgage Trustee certifies:

(a) That it is acting or proposing to act as Mortgage Trustee on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels documented, or to be documented under the U.S. registry;

(b) That it—

(1) Is organized as a corporation under the laws of the United States or of a State and is doing business in the United States;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is a Citizen of the United States eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel within the meaning of 46 U.S.C. 12102(c) and section 2(c) of the 1916 Act, as amended, (46 App. U.S.C. 802(c)) and is eligible to own a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(4) Is subject to supervision or examination by an official of the United States Government or a State; and

(5) Has a combined capital and surplus of at least $3,000,000 as set forth in its most recent published report of condition, a copy of which, dated _____, is attached.

The Mortgage Trustee agrees:

(a) That it will, so long as it shall continue to be on the List of Approved Mortgage Trustees referred to in the Regulation:

(1) Notify the Citizenship Approval Officer in writing, within 20 days, if it shall cease to be a corporation which:

(i) Is organized under the laws of the United States or of a State, and is doing business under the laws of the United States or of a State;

(ii) Is authorized under those laws to exercise corporate trust powers;

(iii) Is a Citizen of the United States;

(iv) Is subject to supervision or examination by an authority of the U.S. Government or of a State;

(v) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000.

(2) notify the Citizenship Approval Officer in writing, of any changes in its name, address, officers, directors, stockholders, articles of incorporation or bylaws as such changes occur;

(3) furnish to the Citizenship Approval Officer on an annual basis:

(i) an Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(ii) a current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

(iii) a copy of the most recent published report of condition of the Mortgage Trustee; and,

(iv) a list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(4) furnish to the Citizenship Approval Officer any further relevant and material information concerning its qualifications as Mortgage Trustee under which it is acting or proposing to act as Mortgage Trustee, as the Citizenship Approval Officer may from time to time request; and,

(5) permit representatives of the Maritime Administration, upon request, to examine its books and records relating to the matters referred to herein;

(b) That it will not issue, assign, or in any manner transfer to a person not eligible to

own a documented vessel, any right under a mortgage of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or operate such vessel without the approval of the Citizenship Approval Officer; except that it may operate the vessel to the extent necessary for the immediate safety of the vessel, for its direct return to the United States or for its movement within the United States for repairs, drydocking or berthing changes, but only under the command of a Citizen of the United States for a period not to exceed 15 calendar days;

(c) That after a responsible official of such Mortgage Trustee obtains knowledge of a foreclosure proceeding, including a proceeding in a foreign jurisdiction, that involves a documented Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on which it holds a mortgage pursuant to approval under the Regulation and to which 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) are applicable, it shall promptly notify the Citizenship Approval Officer with respect thereto, and shall ensure that the court or other tribunal has proper notice of those provisions; and

(d) That it shall not assume any fiduciary obligation in favor of Non-Citizen beneficiaries that is in conflict with any restrictions or requirements of the Regulation.

This application is made in order to induce the Maritime Administration to grant approval of the undersigned as Mortgage Trustee pursuant to 46 App. U.S.C. 802(c) and 46 U.S.C. 12102(c) and the Regulation, and may be relied on by the Citizenship Approval Officer for such purposes. False statements in this application may subject the applicant to fine or imprisonment, or both, as provided for violation of the proscriptions contained in 18 U.S.C. 286, 287, and 1001.

Dated this____ day of____, 20____.
ATTEST:
MORTGAGE TRUSTEE'S NAME & ADDRESS

_____

_____
(Print or type name below)

_____
(SEAL)
By: _____
(Print or type name below)

_____
TITLE

§ 356.31 Maintenance of Mortgage Trustee approval.

(a) A Mortgage Trustee that holds a Preferred Mortgage on a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit the following information to the Citizenship Approval Officer during each year that it is acting as a Mortgage Trustee:

(1) An Affidavit of U.S. Citizenship demonstrating compliance with the U.S. citizenship requirements of the AFA;

(2) A current copy of the Articles of Incorporation and Bylaws, or other comparable corporate documents;

(3) A copy of the most recent published report of condition of the Mortgage Trustee; and,

(4) A list of the Fishing Vessels, Fish Processing Vessels, and Fish Tender Vessels and the respective lenders for which it is acting as Mortgage Trustee.

(b) The Mortgage Trustee must file the documents required in paragraph (a) of this section within thirty (30) days of the annual stockholder's meeting of the Mortgage Trustee, or if no annual meeting is held, then the filing must be within thirty (30) days of the anniversary date of the original Affidavit of U.S. Citizenship filed with MARAD.

(c) If at any time the Mortgage Trustee fails to meet the statutory requirements set forth in the AFA, the Mortgage Trustee must notify the Citizenship Approval Officer of such failure to qualify as a Mortgage Trustee not later than twenty (20) days after the event causing such failure. We will publish in the **Federal Register** a disapproval notice and will so notify the U.S. Coast Guard and the Mortgage Trustee of such disapproval by providing them a copy of the disapproval notice. Within thirty (30) days of such publication in the **Federal Register**, the disapproved Mortgage Trustee must transfer its fiduciary responsibilities to a successor Mortgage Trustee, approved by the Citizenship Approval Officer.

§ 356.37 Operation of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel by a Mortgage Trustee.

An approved Mortgage Trustee cannot operate a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel without the approval of the Citizenship Approval Officer, except where non-commercial operation is necessary for the immediate safety of the vessel and the vessel is operated under the command of a Citizen of the United States for a period of no more than 15 calendar days.

Subpart F—Charters, Management Agreements and Exclusive or Long-Term Contracts

§ 356.39 Charters.

(a) Charters to Citizens of the United States:

(1) Bareboat charters may be entered into with Citizens of the United States subject to approval by the Citizenship Approval Officer that the charterer is a Citizen of the United States. The bareboat charterer of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer for review and approval prior to entering into such charter.

(2) Time charters, voyage charters and other charter arrangements that do not constitute a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may be entered into with Citizens of the United States. The charterer must submit an Affidavit of U.S. Citizenship to the Citizenship Approval Officer within 30 days of execution of the charter.

(b) Charters to Non-Citizens:

(1) Bareboat or demise charters to Non-Citizens of Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels, including Fish Tender Vessels and Fish Processing Vessels, are prohibited.

(2) Time charters, voyage charters and other charters that are not a demise of the vessel may be entered into with Non-Citizens for the charter of dedicated Fish Tender Vessels and Fish Processing Vessels that are not engaged in the Harvesting of fish or fishery resources. A copy of the charter must be submitted to the Citizenship Approval Officer prior to being executed in order for the Citizenship Approval officer to verify that the charter is not in fact a demise of the vessel.

(3) Time charters, voyage charters and other charters of Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessels to Non-Citizens are prohibited if the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel will be used to Harvest fish or fishery resources.

(c) We reserve the right to request a copy of any time charter, voyage charter, contract of affreightment or other Charter of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel in order to confirm that the Charter is not a bareboat charter of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel.

(d) Any violation of this section will render the vessel's fishery endorsement immediately invalid.

§ 356.41 Management agreements.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may enter into a management agreement with a Non-Citizen in which the management company provides marketing services, consulting services or other services that are ministerial in nature and do not convey control of the vessel to the Non-Citizen.

(b) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may not enter into a management agreement that allows the Non-Citizen to appoint, discipline or replace the crew or the master, direct the operations of the vessel or to otherwise effectively gain control over the management and

operation of the vessel or vessel-owning entity.

(c) The owner or bareboat charterer must file with the Citizenship Approval Officer a description of any management agreement entered into with a Non-Citizen. The description must be submitted within 30 days of the execution and must include:

(1) A description of the agreement with a summary of the terms and conditions, and,

(2) A representation and warranty that the agreement does not contain any provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

(d) The Citizenship Approval Officer may request a copy of any management agreement to determine if it contains provisions that convey control over the vessel or vessel-owning entity to a Non-Citizen.

§ 356.43 Long-term or exclusive sales and/or marketing contracts.

(a) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel may enter into an agreement or contract with a Non-Citizen for the sale and/or marketing of all or a significant portion of its catch where the contract or agreement is solely for the purpose of employment of certain vessels on an exclusive basis for a specified period of time. Such contracts or agreements will not require our prior approval; provided, that the contract or agreement does not convey control over the owner or bareboat charterer of the vessel or the vessel's operation, management and harvesting activities.

(b) Provisions of a long-term or exclusive contract or agreement for the sale and/or marketing of all or a significant portion of a vessel's catch entered into pursuant to paragraph (a) of this section that are not considered to convey impermissible control to a Non-Citizen and do not require our approval include provisions that:

(1) Specify that the owner or bareboat charterer agrees to sell and purchaser agrees to procure, on a preferential basis, certain fish caught on a specific vessel;

(2) Specify that the services of the vessel are being employed for catching and supplying a specific type of fish to off loading points designated by the purchaser;

(3) Provide for the replacement of vessels covered by the contract or agreement in the event of loss or damage;

(4) Specify refrigeration criteria;

(5) Provide that the owner or bareboat charterer has to comply with fishing schedules that specify the maximum age of fish to be delivered and a method to coordinate delivery to the purchaser;

(6) Provide for methods of calculating price per pound or other price schedules and a schedule for payment for delivered fish;

(7) Provide for an arbitration mechanism in the event of dispute; and

(8) Provide for the purchaser to furnish off loading crew, but no vessel crew members.

(c) An owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel must obtain the approval of the Citizenship Approval Officer prior to entering into any agreement or contract with a Non-Citizen for the sale and/or marketing of all or a significant portion of a vessel's catch if the agreement or contract contains provisions which in any way convey to the purchaser of the vessel's catch control over the operation, management or harvesting activities of the vessel, vessel owner, or bareboat charterer other than as provided for in paragraph (b) of this section.

(d) An owner or bareboat charterer must submit, with its Affidavit of United States Citizenship and annually thereafter, a list of any long-term or exclusive sales or marketing agreements to which it is a party and the principle parties to those agreements. If requested, a copy of such agreements must be provided to the Citizenship Approval Officer.

§ 356.45 Advance of funds.

(a) A Non-Citizen may advance funds to the owner or bareboat charterer of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel where the basis of the advancement is an agreement between the Non-Citizen and the vessel owner or bareboat charterer to sell all or a portion of the vessel's catch to the Non-Citizen if:

(1) The funds are used for working capital and not for capital expenditures on the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(2) The amount of the advancement does not exceed the annual value of the sales contract;

(3) The Non-Citizen is not granted any rights whatsoever to control the operation, management and harvesting activities of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel;

(4) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen does not convey control over the vessel, the vessel owner or bareboat charterer in any manner whatsoever; and,

(5) No security interest in the vessel is conveyed as collateral for the advance of funds.

(b) An owner or bareboat charterer may enter into an unsecured letter of credit or promissory note with a U.S. branch of a Non-Citizen Lender if:

(1) The Non-Citizen Lender is not affiliated with any party with whom the owner or bareboat charter has entered into a mortgage, long-term or exclusive marketing, sales or purchase agreement, or other similar contract;

(2) The Non-Citizen Lender is not granted any rights whatsoever to control the owner or the operation, management and harvesting activities of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel; and,

(3) The owner or bareboat charterer submits to the Citizenship Approval Officer within 30 days of execution a description of the arrangement and a certification and warranty that the agreement or contract with the Non-Citizen Lender does not convey control over the vessel, the vessel owner or bareboat charter in any manner whatsoever.

(c) The Citizenship Approval Officer may request a copy of any agreement for an advance of funds or letter of credit in order to determine if it contains an impermissible conveyance of control to a Non-Citizen.

Subpart G—Special Requirements for Certain Vessels

§ 356.47 Special requirements for large vessels.

(a) Unless exempted in paragraph (b) of this section, a vessel is not eligible for a fishery endorsement under 46 U.S.C. 12108 if:

(1) It is greater than 165 feet in registered length;

(2) It is more than 750 gross registered tons; or

(3) It possesses an engine or engines capable of producing a total of more than 3,000 shaft horsepower.

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

(1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(2) The vessel is not placed under foreign registry after October 6, 1998;

(3) In the event of the invalidation of the fishery endorsement after October 6, 1998, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

(4) The Vessel is engaged exclusively in the menhaden fishery in the geographic region governed by the South Atlantic Fisheries Council or the Gulf of Mexico Fisheries Council.

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. section 1852(a)(1)) has recommended after October 6, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act of 1998, Title II, Division C, Pub. L. 105–277, to allow such vessel to be used in fisheries under such council's authority.

§ 356.49 Penalties.

If the owner or the representative or agent of the owner knowingly falsified or concealed a material fact or knowingly made a false statement or representation with respect to the eligibility of the vessel under section 12102(c) of Title 46, United States Code, in applying for or applying to renew the vessel's fishery endorsement, the following penalties may apply:

(a) The vessel's fishery endorsement shall be revoked;

(b) A fine of up to $100,000 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States; and

(c) The owner, representative or agent may be subject to additional fines, penalties or both for violation of the proscriptions of 18 U.S.C. 1001 (see also 18 U.S.C. 286, 287).

§ 356.51 Exemptions for specific vessels.

(a) Vessels listed in paragraph (b) of this section are exempt from the requirements of section 12102(c) of Title 46, United States Code, and this part, until such time after October 1, 2001, as more than 50 percent of the interest owned and controlled in the vessel changes; provided, that the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect on October 1, 1998.

(b) The following vessels are exempt from the requirements of 46 U.S.C. 12102(c):

(1) EXCELLENCE (United States official number 296779);

(2) GOLDEN ALASKA (United States official number 651041);

(3) OCEAN PHOENIX (United States official number 296779);

(4) NORTHERN TRAVELER (United States official number 635986); and

(5) NORTHERN VOYAGER (United States official number 637398) or a replacement for the NORTHERN VOYAGER that complies with paragraphs 2, 5, and 6 of section 208(g) of the AFA.

(c) The NORTHERN VOYAGER and NORTHERN TRAVELER must be used in a fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(A) and (B).

(d) The EXCELLENCE, GOLDEN ALASKA, and OCEAN PHOENIX may not be used to Harvest fish.

(e) The following Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels are exempt from the ownership and Mortgagee requirements of the AFA and part 356:

(1) Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1852(a)(1)(H)), and

(2) Purse seine vessels when they are engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty.

(f) Owners of vessels exempt from the requirements of the AFA and part 356 by paragraphs (b) and (e) of this section must still comply with the requirements for a fishery endorsement under the federal law that was in effect on October 1, 1998. The owners must also submit to the Citizenship Approval Officer on an annual basis an Affidavit of United States Citizenship in accordance with § 356.15 demonstrating that they comply with the Controlling Interest requirements of the section 2(b) of the 1916 Act. In addition:

(1) The owners of the Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels listed in paragraph (b) of this section that are exempt from the new requirements of 46 U.S.C. section 12102(c) must specifically outline the current ownership structure, any changes in the ownership structure that have occurred since the filing of the last Affidavit, and a chronology of all changes that have occurred since October 6, 1998; and,

(2) The owners of Fishing Vessels, Fish Processing Vessels, or Fish Tender Vessels exempted under paragraph (e) of this section must note on the Affidavit that the owner is claiming an exemption from the requirements of part 356 pursuant to § 356.51(e).

Subpart H—International Agreements

§ 356.53 Conflicts with international agreements.

(a) If the owner or Mortgagee of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel believes that there is a conflict between 46 CFR part 356 and any international treaty or agreement to which the United States is a party on October 1, 2001, and to which the United States is currently a party, the owner or Mortgagee may petition the Citizenship Approval Officer for a ruling that all or part of the requirements of part 356 do not apply to that particular owner or particular Mortgagee with respect to a specific vessel; *provided,* the petitioner had an ownership interest in the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel, or a mortgage on the vessel in the case of a Mortgagee, on October 1, 2001, and is covered by the international agreement. Petitions may be filed prior to October 1, 2001 by owners or Mortgagees with respect to international treaties or agreements in effect at the time of the petition which are not scheduled to expire prior to October 1, 2001.

(b) A petition for exemption from the requirements of part 356 must include:

(1) Evidence of the ownership structure of the Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel as of October 1, 2001, (or on the date of the petition for petitions filed prior to October 1, 2001), and any subsequent changes to the ownership structure of the vessel;

(2) A copy of the provisions of the international agreement or treaty which the owner believes are in conflict with the regulations;

(3) A detailed description of how the provisions of the international agreement or treaty and the regulations are in conflict;

(4) A certification in all petitions filed on or after October 1, 2001, that no interest in the vessel-owning entity has been transferred to a Non-Citizen after September 30, 2001; and,

(5) For all petitions filed prior to October 1, 2001, a certification that the owner intends to transfer no interest in

the vessel-owning entity to a Non-citizen for the succeeding year.

(c) A separate petition must be filed for each Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel unless the Citizenship Approval Officer authorizes consolidated filing. Petitions should include two copies of all materials and should be sent to the following address: Maritime Administration, Office of Chief Counsel, Citizenship Approval Officer, Room 7228, 400 7th Street, S.W., Washington, DC 20590.

(d) Upon receipt of a complete petition, the Citizenship Approval Officer will review the petition to determine whether the international agreement and the requirements of Part 356 are in conflict. To the extent that it is determined that an international agreement covering the petitioner is in conflict with the requirements of part 356, and 46 U.S.C. 12102(c) will not be applied to the petitioner with respect to the specific vessel. The petitioner will be required to comply with the documentation requirements as in effect on October 5, 1998, prior to passage of the AFA.

(e) The owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel that is determined through the petition process to be exempt from all or part of the requirements of part 356 must submit evidence of its ownership structure to the Citizenship Approval Officer on an annual basis. The owner must specifically set forth:

(1) Its current ownership structure;

(2) The identity of all Non-Citizen owners and the percentage owned,

(3) Any changes in the ownership structure that have occurred since the filing of the last Affidavit; and,

(4) A certification that no interest in the vessel was transferred to a Non-Citizen after September 30, 2001.

(f) The provisions of part 356 shall apply:

(1) To all owners and Mortgagees of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel who acquired an interest in the vessel after October 1, 2001; and

(2) To the owner of a Fishing Vessel, Fish Processing Vessel, or Fish Tender Vessel on October 1, 2001, if any ownership interest in that owner is transferred to or otherwise acquired by a Non-Citizen after such date.

Subpart I—Review of Harvesting and Processing Compliance

§ 356.55 Review of compliance with harvesting and processing quotas.

(a) Upon the request of either the North Pacific Fishery Council or the Secretary of Commerce, the Citizenship Approval Officer will review any allegation that an individual or entity has exceeded the allowable percentage for harvesting or processing pollock as provided for in section 210(e)(1) or (2) of the AFA.

(b) The Citizenship Approval Officer will require a Person(s) alleged to have exceeded the cap to submit any information that is deemed relevant in determining whether such Person(s) have exceeded the cap.

(c) The Citizenship Approval Officer will make a finding as soon as practicable and will submit it to the North Pacific Fishery Council and the Secretary of Commerce.

(d) For purposes of this section, if 10 percent or more of the interest in an entity is owned or controlled either directly or indirectly by another individual or entity, the two entities will be considered the same entity for purposes of applying the harvesting and processing caps.

(1) For purposes of this subsection, an entity will be deemed to have an ownership interest in a pollock harvesting or processing entity if it either owns a percentage of the pollock harvesting or processing entity directly or if ownership of can be traced through intermediate entities to the pollock harvesting or processing entity. To determine the percentage of ownership interest that an entity has in a pollock harvesting or processing entity where the ownership interest passes through one or more intermediate entities, the entity's percentage of direct interest in an intermediate entity is multiplied by the intermediate entity's percentage of direct or indirect interest in the pollock harvesting or processing entity.

(2) For purposes of this subsection, an entity will be deemed to exercise 10 percent or greater control over a pollock harvesting or processing entity if:

(i) It has the right to direct the business of the pollock harvesting or processing entity;

(ii) It has the right to appoint members to the management team of the pollock harvesting or processing entity such as the directors of a corporation or is a general partner or joint venturer in a harvesting or processing entity;

(iii) It has the right to direct the business of an entity that directly or indirectly owns or controls 10 percent of a harvesting or processing entity; or

(iv) It owns 50% or more of an entity that owns or controls 10 percent of a pollock harvesting or processing entity.

(e) If the Citizenship Approval Officer determines that a Person has violated § 210(e) of the AFA, the Person is entitled to notice and an opportunity for a hearing before the Secretary of Commerce in accordance with section 554 of title 5, United States Code.

(f) Violations of section 210(e) of the AFA will be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Fisheries Act, 16 U.S.C. section 1857, and may subject the individual to:

(1) Civil penalties;

(2) Permit sanctions applicable under section 308 of the AFA; and

(3) Forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

Dated: December 27, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–18 Filed 1–4–00; 8:45 am]

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Federal Register

Wednesday
January 5, 2000

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Exceptions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A6; FV98–930–2]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The amendments were proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. One amendment would clarify the current limitation on the number of Board members that may be from, or affiliated with, a single ''sales constituency'' by amending the definition of that term. Another would simplify the method used to establish volume regulations for tart cherries. The proposed amendments are intended to improve the operation and functioning of the tart cherry marketing order program.

DATES: Written exceptions must be filed by February 4, 2000.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, FAX number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0200; telephone: (202) 720–2491, or Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Hearing issued on November 12, 1998, and published in the November 17, 1998, issue of the **Federal Register** (63 FR 63803).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin (hereinafter referred to as the order), and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Anne M. Dec whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendment of Marketing Agreement and Order No. 930 is based on the record of a public hearing held in Grand Rapids, Michigan on December 1, 1998, and in Salt Lake City, Utah on December 3, 1998. Notice of this hearing was published in the **Federal Register** on November 17, 1998. The notice of hearing contained proposals submitted by the Board.

The Board proposed two amendments. One would amend the current order provision which defines the term ''sales constituency'' in order to clarify the intent of the Board membership limitation regarding sales constituency affiliation. The second would simplify the method used to establish volume regulations for tart cherries.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), proposed to allow such changes as may be necessary to the order, if either or both of the above amendments are adopted, so that all of its provisions conform with the proposed amendment.

Eighteen witnesses testified at the hearing. These witnesses represented tart cherry growers, processors and marketers in Michigan, Oregon, Washington and Utah. Some witnesses supported the Board's proposed amendments, while others were opposed to the recommended changes.

At the conclusion of the hearing, the Administrative Law Judge fixed February 11, 1999, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. That date was later extended to February 26, 1999. Six briefs were filed. Briefs in support of the proposed amendments were filed by the Cherry Industry Administrative Board; Michigan grower Cherry Bay Orchards, Inc.; and CherrCo, Inc. of Ludington, Michigan. Briefs in opposition to one or both of the proposed amendments were filed by Oregon grower Fruithill, Inc.; the Oregon Tart Cherry Association; and Washington grower Washington Tart Cherry.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to clarify the current limitation on the number of Board members that may be from, or affiliated with, a single ''sales constituency'; and

(2) Whether to simplify the method used to establish volume regulations for tart cherries.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

Material Issue Number 1—Definition of Sales Constituency

The current order provision which defines the term ''sales constituency'' should be amended in order to clarify the intent of the Board membership limitation regarding sales constituency membership or affiliation.

The tart cherry marketing order, which became effective in 1996, covers tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The record indicates that while the order covers tart cherries grown in seven States, production is not evenly distributed among those States. To illustrate, the 1998–99 tart cherry crop was about 340 million pounds. Michigan accounted for 76.4 percent of the production, followed by Utah with 9.6 percent, Wisconsin with 4.3 percent, Washington with 4.0 percent, New York with 3.9 percent,

Pennsylvania with 1.2 percent, and Oregon with 0.6 percent.

The record evidence is that there are about 41 tart cherry handlers covered by the program and about 896 growers in the production area. By State, about 72.5 percent of the growers are in Michigan, 9.9 percent in New York, 5.3 percent in Utah, 4.5 percent in Wisconsin, 3.6 percent in Pennsylvania, 2.5 percent in Oregon, and 1.7 percent in Washington.

The program is administered locally by the 18-member Cherry Industry Administrative Board. Among the Board's responsibilities is recommending regulations to implement marketing order authorities. For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members. For those districts with more than one member, only one of those members can be associated with a single ''sales constituency.'' Five of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each are Oregon, Pennsylvania, Washington and Wisconsin. (The eighteenth Board member is selected to represent the general public, and need not be from any specific area.)

The term ''sales constituency'' is currently defined in § 930.16 of the order to mean a common marketing organization or brokerage firm or individual representing a group of handlers or growers. Section 930.20(f) states that not more than one Board member may be from, or affiliated with, a single sales constituency in those districts having more than one seat on the Board. Record evidence shows that this limitation was designed to prevent any single sales organization from having undue control of Board decision making. Actual control of the sales function was cited as the defining characteristic of a ''sales constituency.''

The record further indicates that this limitation was designed to prevent the recurrence of a problem that existed under a previous Federal tart cherry marketing order that was in effect from 1971 through 1987. Under the terms of that program, persons affiliated with a single sales organization could fill a majority of Board member seats. This could occur even if that organization accounted for less than a majority of the total volume of tart cherries produced. Under the terms of the previous order, actions of the Board only required a simple majority vote. This meant that representatives from a single sales organization could pass Board actions without the support of other industry members. Several witnesses testified that the current order requirement that any action be approved by 12 of 18 Board members makes the sales constituency limitation far less critical than it was in the past.

The record shows that the tart cherry industry is comprised of many different types of organizations with varying functions. At one end of the spectrum is a group like Cherry Central, Inc. (Cherry Central). The record indicates that Cherry Central is a federated cooperative with 14 grower cooperative members. Twelve of those cooperatives grow tart cherries. Other commodities marketed by Cherry Central include sweet cherries, blueberries and apples. Cherry Central members grow fruit in Michigan, New York, Utah, Washington, and Wisconsin, as well as in Florida, Georgia and Indiana.

The record indicates that Cherry Central's purpose is to market and sell its members' tart cherries and other products. It acts as the sole sales agent for its members, performing a broad range of sales activities from advertising to quality control. It employs its own sales force that is responsible for soliciting customers, dealing with buyers and negotiating sales. It acts as a single entity in the marketplace, not differentiating among its members' products.

The record indicates that the sales constituency limitation was clearly intended to apply to this type of organization. That was the intent at the time the current order was promulgated when Cherry Central was identified as the type of organization whose Board membership should be limited. No witness offered testimony indicating that such limitation is no longer necessary.

At the other end of the spectrum is an organization known as the Cherry Marketing Institute (CMI). CMI is an organization established under Michigan State law, and its members grow tart cherries in a number of States. CMI's primary function is to conduct generic promotion activities to expand overall sales of tart cherry products. It also conducts research in the areas of processing techniques and product development. CMI activities are funded primarily with tart cherry grower dollars. CMI is not directly involved in the sales of tart cherries.

The record indicates that CMI efforts benefit all tart cherry growers and processors, not only those who contribute to its operations. At the time the order was promulgated, it was specifically stated that the sales constituency limitation should not apply to CMI. No evidence contrary to this view was presented in the current proceeding.

Another example of an organization that would not constitute a sales constituency under the current order definition is the Michigan Agricultural Cooperative Marketing Association (MACMA). The record indicates that MACMA is another grower organization formed to act on the behalf of tart cherry growers generally. At one time, MACMA was involved in negotiating grower prices, but it no longer performs that function. MACMA's current functions are to collect and disseminate market information to assist growers in making informed decisions. Again, the record contains no evidence which would suggest that MACMA's status under the order should be reconsidered.

Between the two ends of the spectrum is a recently formed federated cooperative named CherrCo, Inc. (CherrCo). The record indicates that this organization was not in existence at the time the order became effective, although preliminary discussions concerning its formation may have been underway. The record contains varying viewpoints as to whether CherrCo should be considered as a single sales constituency for purposes of Board membership under the current order provisions.

The record shows that CherrCo is a federated grower cooperative. It is comprised of 24 member cooperatives. CherrCo's members account for 75–80 percent of Michigan's tart cherry production, and a significant portion of the production in New York, Utah, Washington and Wisconsin. CherrCo currently has no members in Oregon or Pennsylvania. The record indicates that CherrCo members range in size producing from approximately 600,000 pounds of tart cherries per year to more than 50 million pounds of tart cherries per year.

The primary function of CherrCo is to establish minimum prices for tart cherries. Minimum prices are established for various grades and packs of frozen and hot pack tart cherries, but not for pie fill, dried cherries, or other products. All CherrCo's members agree to sell their frozen and hot pack tart cherry products at or above these minimum prices.

Record evidence further indicates that CherrCo is not directly involved in the actual sales of its members' products. Instead, each member individually selects a sales agent. These agents then

work to generate and consummate sales for the individual CherrCo member, not for CherrCo itself. No cherries are sold under the CherrCo name, but rather under that of the CherrCo member or the sales agent. CherrCo members are free to change their sales agents whenever they so choose.

According to record evidence, competition among CherrCo members is strong, unlike that of members of other organizations such as Cherry Central. Cherry Central, for example, works as a single unit to sell the products of its members, and there is no competition among its members to secure sales. CherrCo members, on the other hand, compete with each other, as well as with non-CherrCo members to secure sales of their products. The record evidence is that while CherrCo members' sales agents agree to meet the minimum prices established by CherrCo, there are many other ways that individual companies compete to obtain sales (that is, other than on the basis of price). These include, for example, the product mix offered by individual companies. Testimony indicates that while some CherrCo members offer an extensive mix of tart cherry and other products, others specialize in a single product (for example, frozen tart cherries). Other ways individual companies that belong to CherrCo differentiate themselves are on their own reputations, on the quality of the products they offer, on any special services they supply to their customers, and on whether or not their processing plants are certified to conform with certain sanitation standards.

The record shows that CherrCo does not perform functions other sales organizations may. CherrCo does not make any processing or sales decisions. It does not direct how much its members should produce, what products they should produce, or for whom. Sales information is treated as proprietary and is not shared with CherrCo's membership. Information such as who is selling to whom and at what price is kept confidential. Witnesses testified that this is unlike the way Cherry Central operates. In that organization, members share information on customers and quantities sold.

The record also shows that, in addition to establishing minimum prices, CherrCo performs other functions for its members. Most of these functions relate directly to ensuring that its members are complying with their agreement to abide by the established minimum prices. The record shows, for example, that CherrCo licenses its sales agents. All CherrCo members agree to sell only through these licensed sales agents. In order to become licensed, the sales agents agree to conform to CherrCo's pricing structure. The record indicates that CherrCo currently has 10 licensed sales agents, all of which also agree to only market CherrCo members' products.

CherrCo performs other functions as well, such as collecting proceeds from sales and distributing them to its members. The record indicates that subsequent to processing by a CherrCo member, tart cherries are sent to a storage facility (for example, a freezer). At that time, the cherries are consigned to CherrCo. On paper, the cherries belong to CherrCo, although they are not physically in CherrCo's possession. CherrCo is then informed of any sale by the member's sales agent and, if the minimum pricing requirements are met, the cherries are released by CherrCo for movement. CherrCo then bills the buyer, collects the proceeds, and remits those proceeds to the pertinent member after subtracting an administrative charge to cover its expenses.

It was testified that CherrCo employs a staff of four individuals, including its President. None of these individuals are engaged in negotiating sales with current or prospective buyers on behalf of CherrCo members. One employee is responsible for billing, and disbursing sales receipts. Another monitors sales agreements between licensed sales agents and buyers, and releases tart cherries for movement if those agreements conform with CherrCo's minimum pricing requirements. A third employee tracks the inventory consigned to CherrCo. The President oversees the day-to-day operations of the organization and is responsible for member relations. Again, none of these employees is actively engaged in arranging for the sale of tart cherry products.

The Board's recommended amendment would revise the current definition of ''sales constituency'' to specifically exclude an organization which receives consignments of tart cherries but does not direct where those cherries are sold. This exclusion would mean that entities which perform functions and services such as CherrCo would not be considered sales constituencies, and their representation on the Board would not be subject to the limitation in § 930.20(f) of the order.

Witnesses supporting the Board's proposal agreed with the proponents' intent at the time of the order's promulgation that control of sales should be the criteria for determining whether an organization is considered a sales constituency. They also testified that CherrCo is more akin to CMI than to Cherry Central because its activities benefit everyone in the tart cherry industry, not just its members. There was testimony to the effect that limiting representation on the Board by CherrCo members could disenfranchise many tart cherry growers. That is, many growers would be deprived of adequate representation on the Board. This is because such a high percentage of growers are affiliated with CherrCo. The record indicates this would be particularly true in certain districts. Several witnesses stated that in District 2—Central Michigan—almost all tart cherry growers and handlers are affiliated with CherrCo. Since District 2 has three positions on the Board, this could result in two vacant seats in a district that produces over 17 percent of the tart cherry crop. A similar situation could exist in Northern Michigan (District 1), the largest growing area with four Board positions. Witnesses estimated that growers and handlers accounting for between 70 and 80 percent of that area's cherries are affiliated with CherrCo. Limiting those growers and handlers to only one of the District's four seats may make it more difficult to fill the remaining positions. The proponents indicated that even if qualified candidates could be found to serve in those Board positions, it would not provide equitable representation for the majority of growers in that district.

Industry witnesses supporting the Board's proposed amendment were all affiliated with CherrCo in some way. Three witnesses not affiliated with CherrCo presented opposition testimony. One, a grower/processor in Oregon, suggested that the current Board is improperly constituted. This witness believed that CherrCo is indeed a sales constituency as currently defined under the order. He was opposed to any single interest group being able to control the Board, and believed the Board's proposal would allow just that.

The witness suggested two alternatives. One was to prohibit any sales constituency from having more than half the seats on the Board. The other would prohibit any industry group (rather than just a sales constituency) from having more than one seat per district. His stated objective was to provide the Department with additional methods of allocating Board membership in ways that would ensure that the interests of small, remote, independent growers are protected. In the brief filed by this witness, he recommended that the Board's proposed amendment be rejected, and that this issue be referred back to the Board for reconsideration.

A tart cherry grower/handler from Washington had similar concerns about CherrCo being able to control Board decisions. He suggested that the current sales constituency limitation be applied to industry groups like CherrCo. He also proposed that an additional requirement be added to the order to provide that no sales constituency could have more than a total of eight members on the Board. In his brief, he further proposed that limitations on Board membership should apply to all industry organizations, not only to sales constituencies.

The third witness offering evidence in opposition to the Board's proposal was a tart cherry grower and handler in Utah. He agreed with the statements made earlier in this decision that Cherry Central is an industry group whose membership on the Board should be limited, whereas CMI is not. He disagreed, however, with the proponents' classification of CherrCo. His testimony was that CherrCo does perform important sales functions for its members such as minimum pricing and billing, collecting and disbursing sales receipts. CherrCo's members have common economic and proprietary interests. As such, the marketing order needs to have some provisions to ensure that industry members outside that organization have a voice in Board deliberations.

This witness suggested that one or more ''at-large'' industry member positions be added to the Board. These members could be from any district in the production area. This proposal would provide growers in districts heavily dominated by CherrCo with an alternative—that is, to vote for representatives other than those supported by CherrCo affiliates.

There are many different ways the Board's membership could be allocated. There are some fundamental issues, however, that the alternative proposals offered on the record fail to address.

The record shows that there are varying interests among tart cherry growers and handlers, dependent in large part on the district in which they are located. One critical difference, of course, is that some of the districts are subject to volume regulation while others are not. Other differences among districts include varying growing and marketing conditions. It is the Department's view that any scheme for Board membership allocation must ensure that growers in each production district have fair representation in program matters. As previously discussed, restrictions on CherrCo's membership on the Board would impact different growing areas differently. For example, growers in some of the highest volume producing areas could be prevented from having adequate representation on the Board. None of the alternatives proposed adequately address this concern.

Based on record evidence, the Department has determined that the differences between the functions of an organization such as CherrCo and other organizations that qualify as sales constituencies under the current order definition of that term are such that these organizations should not be considered to be ''sales constituencies'' for the purpose of the order limitation concerning Board membership.

CherrCo members do not act as a single interest group. Rather, the interests of individual members are sufficiently diverse to preclude the need to limit their representation on the Board. Adequate safeguards exist for ensuring the fair consideration of all industry segments in implementing the program. These include the geographic allocation of membership, the super-majority voting requirement for Board actions, the public rulemaking process followed to implement any regulatory actions, and the Department's role in overseeing operation of the program.

For these reasons, the Department is recommending adoption of the Board's proposed amendment to § 930.16 *Sales Constituency*. This section would be amended by adding the following sentence: ''An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales constituency.''

Material Issue Number 2—Revision of Optimum Supply Formula

The tart cherry marketing order should be amended to simplify the procedures followed to establish volume regulations.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. The order provides that production area districts with annual production of less than 15 million pounds of cherries are not subject to volume regulation. Under this provision, volume regulations have not applied to cherries grown in Oregon, Pennsylvania, Washington and Wisconsin.

Volume regulations are implemented through the establishment of free and restricted percentages, that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from normal commercial outlets. This can be accomplished by either placing the cherries into handlers' inventories or by diverting them. Cherries may be diverted in the orchard or at the processing plant; placed into a reserve pool; or sold in secondary markets. These secondary markets include exports (except to North America or Japan), and new products. Sales of restricted percentage cherries to these specified exempt markets receive diversion credits which handlers use to fulfill their restricted obligation.

The record indicates that the primary objective of tart cherry volume regulations is to balance supplies with market demand, thereby stabilizing the market and improving grower and processor returns. A second objective is to encourage market growth by allowing restricted percentage cherries to be sold in secondary markets (for example, most export markets). Witnesses attributed much of the improvement in recent cherry market conditions to the use of volume regulations in the 1997/98 and 1998/99 seasons.

The order currently sets forth an ''Optimum Supply Formula'' (OSF) which the Board must follow in its consideration of annual free and restricted percentages. First, the Board considers the available supply of tart cherries. This is the sum of the annual crop estimate and the carry-in supply from previous crop years. The Board next computes the optimum supply and compares it with the available supply. If the available supply exceeds the optimum supply, then a surplus exists, calling for the use of supply controls. The calculated surplus is then divided by the projected production in the regulated districts to derive the restricted percentage.

The optimum supply is currently defined as 100 percent of the average sales of the prior 3 years, to which is added a desirable carryout inventory not to exceed 20 million pounds (or such other amount as the Board, with the Secretary's approval, may establish). According to the record, using 100 percent of prior years' sales may result in an overstatement of the optimum supply. This is because those total sales include not only sales to the primary market, but sales of restricted percentage cherries to secondary markets as well. Currently, all sales of restricted percentage cherries that receive diversion credits are included in the total sales figure.

The record shows that including the sales of restricted percentage cherries in

the optimum supply may understate the projected surplus which would then result in a higher free percentage than supply and market conditions warrant. Making too many tart cherries available to be sold in the primary market could obviate the objectives of supply management. In the years that tart cherry volume regulations have been used, this issue has been addressed through use of an adjustment in order to achieve an optimum supply of cherries in the marketplace. Once a surplus has been computed (deducting the optimum from the available supply), sales of restricted percentage cherries to secondary markets are added back to the surplus as an economic adjustment. The Board's recommended amendment would revise the order procedures currently used in calculating the optimum supply. Under its proposal, the optimum supply would be equal to the 3-year average sales in primary markets (total sales less sales to markets eligible for diversion credit) plus the target carryout. It is intended that all sales of restricted percentage cherries that receive diversion credits would be deducted from the optimum supply calculation, except as discussed later in this decision.

The record indicates that this change would simplify current procedures and make them easier for tart cherry growers and processors to understand. This would benefit the industry without changing the actual level of regulation.

The following example was presented at the hearing to illustrate the change being proposed. The example uses numbers from the 1997 tart cherry crop. With the exception of the regulated percentages, all numbers are in million pound units.

	With current approach	With proposed approach
U.S. Crop Size ..	285	285
Carryin	+70	+70
Total Available Supply	355	355
Optimum Supply Formula		
3 Year Average Industry Sales	270	270
Adjustment for Diversion Credits	.....	−23
Target Carry-out	*+0*	*+0*
Optimum Supply	270	247
Surplus	85	108
Adjustment for Economic Conditions ..	23	.....
Surplus after Adjustment	108	108
Production in Regulated Districts	240	240
Regulated Percentage	45%	45%

While no evidence was received at the hearing in overall objection to this change, one portion of the proposal did generate some disagreement. The Board's proposed amendment stated that the optimum supply volume shall be calculated as ''100 percent of the average sales of the prior three years, reduced by the sales that represent dispositions of restricted cherries qualifying for diversion credit, unless the Board votes to do otherwise * * *'' This last phrase, ''unless the Board votes to do otherwise,'' was objectionable to some witnesses.

Evidence shows that this phrase is intended to allow the Board a limited amount of flexibility in recommending free and restricted percentages appropriate for a specific season. The record shows that this provision is intended only to enable the Board to revise the volume of restricted sales it subtracts from total sales in determining the optimum supply, and only if economic and other conditions warrant such a revision. This provision would not allow a wholesale change in the way free and restricted percentages are calculated.

Record evidence indicates that in most years, the Board would be required to use the optimum supply formula set forth in the order (that is, 100 percent of average sales reduced by sales of restricted percentage cherries). Witnesses provided several examples of situations where a revision in the volume subtracted from total sales might be needed.

One example given was that of a freeze in another producing country. Under such a circumstance, reduced supplies from a foreign source would provide additional marketing opportunities for the U.S. tart cherry industry. An increased optimum supply (by reducing the amount of sales of restricted percentage cherries from total sales) would enable the industry to take advantage of these opportunities.

A second example involved export sales. As previously described, sales of restricted percentage cherries in certain secondary (or exempt) markets qualify for diversion credits. Those secondary, exempt markets are defined through the informal rulemaking process and can change over time. If those exempt markets are redefined, an adjustment in the optimum supply would be needed to reflect that change. For example, sales of restricted percentage cherries to export markets (except North America and Japan) currently qualify for diversion credits. If exports were no longer considered a secondary, exempt market, but part of the primary market, subtracting past years' export sales from total sales would result in an optimum supply that would allow too few cherries available for the newly defined primary market. In this situation, sales of restricted percentage cherries to export markets would not be subtracted from total sales. On the other hand, if a new market were designated as a secondary, exempt market, sales to that new market in previous years might need to be subtracted from total sales in those years. Otherwise, the optimum supply could allow too many cherries to enter the primary market.

The record supports allowing the Board some discretion in determining the amount of sales of restricted percentage cherries it subtracts from total sales to derive the optimum supply. As shown in the examples above, that amount could be greater or less than actual sales of restricted cherries in the defined previous period (three years).

Witnesses objecting to the Board's proposed amendment believed that this phrase would give the Board too much discretion in establishing volume regulations. For example, they believed that the Board could choose to use an equation to compute free and restricted percentages that was totally different from that contained in the order. Additionally, it was believed that the Board could use a different procedure in establishing its preliminary percentages (done on or about July 1) than in establishing its final percentages (done by September 15, adjusted for actual production). It was testified that significant changes in procedures from one season to another, and particularly within a single season, would be extremely disadvantageous to growers and processors. This is because industry members make decisions based on their expectations of what program requirements will be. Constantly changing these requirements would therefore create chaos rather than stability in the tart cherry industry.

Based on record testimony, it is clear that this provision is intended to provide only limited discretion to the Board. The Board should, with adequate

justification and the Secretary's approval, have the discretion to adjust the volume of sales of restricted percentage cherries it subtracts from total sales to derive its annual optimum supply, if such an adjustment is needed to promote orderly marketing conditions. Barring an emergency, a major change in economic conditions, or other like circumstances, the amount subtracted cannot later be changed within a given season, except as may be necessary to replace any estimates of sales used at the time preliminary percentages are recommended with actual figures known at the time final percentages are established.

Further, the fact that any such adjustment would require the vote of 12 of the 18 Board members and that such an adjustment would require the Secretary's approval through the public rulemaking process should serve as sufficient safeguards to ensure the judicious use of this discretion.

The proposed amendment to § 930.50(a) of the order which appeared in the notice of hearing has been changed by the Department to clarify (for the reasons discussed above) that the discretion provided by this phrase only pertains to the volume of sales of restricted percentage cherries that is subtracted from total sales to derive the optimum supply.

In addition, witnesses proposed one clarifying change in the language contained in the notice of hearing. As previously indicated, the optimum supply volume is calculated as 100 percent of the average sales of the prior three years. The Board's amendment, as set forth in the notice of hearing, proposed that this total be reduced by sales of restricted cherries qualifying for diversion credit. However, no time period was specified for the sales of restricted cherries that were to be subtracted from the total sales. The record indicates that the same 3-year average should be used for both total sales and the sales of restricted cherries qualifying for diversion credits. Such language has been added to § 930.50(a) to clarify this point.

One other change is being made in the language in § 930.50(a) by the Department. The language in the notice of hearing referred to sales of ''restricted cherries.'' This phrase has been changed to ''restricted percentage cherries'' since that phrase is defined in § 930.15 of the order and is a more accurate phrase to use.

For the above reasons, the Department is recommending that § 930.50(a) be amended to provide that sales of restricted percentage cherries qualifying for diversion credits be subtracted from total industry sales in deriving the optimum supply of tart cherries.

The Agricultural Marketing Service proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. No necessary conforming changes have been identified by the Department.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, as a result of these proposed amendments.

The record indicates that during the 1998–99 crop year, approximately 41 handlers were regulated under Marketing Order No. 930. In addition, there were about 896 producers of tart cherries in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The 1998–99 tart cherry crop was about 340 million pounds. The record indicates that of the 41 tart cherry handlers, 12 had processed tonnage of more than 10 million pounds (or 29 percent of all handlers); 4 had between 5 and 10 million pounds (10 percent); 15 had between 1 and 5 million pounds (37 percent); and the remaining 10 had less than 1 million pounds of processed tonnage (24 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities. The majority of tart cherry processors are located in Michigan. Many handle cherries grown in more than one district. Michigan accounted for 76.4 percent of the production, followed by Utah with 9.6 percent, Wisconsin with 4.3 percent, Washington with 4.0 percent, New York with 3.9 percent, Pennsylvania with 1.2 percent, and Oregon with 0.6 percent. By State, about 72.5 percent of the growers are in Michigan, 9.9 percent in New York, 5.3 percent in Utah, 4.5 percent in Wisconsin, 3.6 percent in Pennsylvania, 2.5 percent in Oregon, and 1.7 percent in Washington.

Dividing total production by the number of growers, the average grower produces about 380,000 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $76,000. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition. No record evidence was provided to indicate how many tart cherry growers produce 2.5 million pounds or more. One witness testified, however, that an estimated 150 growers (about 17 percent of the total number of growers) produce in excess of 1 million pounds, with the remainder producing less than that. With a majority of growers producing less than 1 million pounds, it follows that a majority of growers produce less than 2.5 million pounds. This supports the conclusion that the majority of tart cherry growers are small businesses. By State, however, average grower size varies considerably. The average grower in Washington accounts for roughly 910,000 pounds of cherries. Next in size is Utah with 680,000 pounds, followed by Michigan (400,000 pounds), Wisconsin (370,000 pounds), New York (150,000 pounds) Pennsylvania (130,000 pounds), and Oregon (100,000 pounds).

This decision recommends two amendments to the tart cherry marketing order. One would clarify the current limitation on the number of Board members that may represent a single ''sales constituency.'' The second would simplify the method used to establish volume regulations for tart cherries.

Definition of Sales Constituency

Section 930.20 of the tart cherry marketing order provides for an 18-member Cherry Industry Administrative Board to assist the Department in

administering the program. That section also divides the production area into nine districts for purposes of representation on the Board and allocates membership among those districts. Five of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), and Utah (two members). The four districts with one member each are Oregon, Pennsylvania, Washington and Wisconsin. (The eighteenth Board member is selected to represent the general public, and need not be from any specific area.)

Section 930.20 further provides that for those districts allocated more than one member, only one of those members can be affiliated with a single sales constituency. Section 930.16 currently defines a sales constituency to mean a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

The proposed amendment to § 930.16 would provide that an organization that receives consignments of cherries but does not direct where those cherries are sold would not be considered a sales constituency. The growers and handlers affiliated with such an organization would not be limited in their representation on the Board.

The record shows that one of the Board's primary responsibilities is to recommend regulations to implement the marketing order's authorities relating to supply management, or volume regulation. Volume regulations benefit all industry members, both large and small, by matching demand in primary markets with available supplies of tart cherries. These regulations also serve to expand sales in secondary markets. The result is improved grower and processor returns.

The record shows that approximately 11 of the current 18 members of the Board are affiliated in some way with CherrCo, the organization which raised the question of the intended meaning of the term sales constituency. Applying the current order limitation on the number of members representing a single sales constituency to CherrCo would result in five of the current Board members being declared ineligible to serve on the Board. All of these members represent regulated districts—four in Michigan and one in New York.

The record shows that CherrCo is a federated grower cooperative. It is comprised of 24 member cooperatives. CherrCo's members account for 75–80 percent of Michigan's tart cherry production, and a significant portion of the production in New York, Utah, Washington and Wisconsin. CherrCo currently has no members in Oregon or Pennsylvania. The record indicates that the primary function of CherrCo is to establish minimum prices for certain tart cherry products. The record indicates that CherrCo is not directly involved in the actual sales of its members' products. There is intense competition among its members (as well as between its members and non-members) to sell tart cherries. The competition for sales is on the basis of individual handlers' reputations, on the quality and mix of the products they offer, on any special services they supply to their customers, and on whether or not their processing plants are certified to conform with certain sanitation standards.

Opponents of the Board's proposal believe that not limiting CherrCo's representation would result in the elimination of certain safeguards incorporated in the order to preserve the varying interests of tart cherry growers and processors, especially those outside the major producing area of Michigan. These safeguards include the requirement that Board actions be passed by a super-majority (12 of 18 members), that Board representation be allocated among districts, and that districts accounting for less than 15 million pounds of production be exempt from volume regulations.

None of these program requirements could be changed by Board action alone. All would require an order amendment through the formal rulemaking process, including public hearings and the Department's analysis of impacts of costs and benefits to small and large growers and processors. Additionally, record evidence shows that individual CherrCo members have sufficiently diverse interests to preclude them from voting alike on all issues before the Board.

Based on the evidence in the record, it is the Department's conclusion that an organization such as CherrCo should not be considered a sales constituency. Limiting Board representation by members of organizations such as CherrCo would be inconsistent with the proper functioning of the order and would be contrary to the original intent of the limitation on Board representation. This proposed amendment should be favorable to both large and small entities.

Revision of the Optimum Supply Formula

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Authority for such regulations appears in § 930.51 of the marketing order.

Volume regulations are implemented through the establishment of free and restricted percentages. Such percentages are recommended by the Board in accordance with § 930.50 of the order, and, if deemed appropriate, implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. ''Free market tonnage percentage'' cherries may be marketed in any outlet. ''Restricted percentage'' cherries must be withheld from the primary market. They may be diverted in the orchard or at the processing plant; placed into a reserve pool; or sold in secondary markets. These secondary markets include exports (except to North America or Japan), and new products. Sales of restricted percentage cherries to these specified exempt markets receive diversion credits which handlers use to fulfill their restricted obligation.

The record indicates that the primary objective of tart cherry volume regulations is to balance supplies with market demand, thereby stabilizing the market and improving grower and processor returns. A second objective is to encourage market growth by allowing restricted cherries to be sold in secondary markets (for example, most export markets). Witnesses attributed much of the improvement in recent cherry market conditions to the use of regulation in the 1997/98 and 1998/99 seasons.

The order currently sets forth, in § 930.50, an ''Optimum Supply Formula'' (OSF) which the Board must follow in its consideration of annual free and restricted percentages. The optimum supply is currently defined as 100 percent of the average sales of the prior 3 years, to which is added a desirable carryout inventory.

The record indicates that using 100 percent of prior years' sales results in an overstatement of the optimum supply. The record shows that including the sales of restricted cherries in the optimum supply understates the projected surplus and results in a higher free percentage than supply and market conditions warrant. This is because those total sales include not only sales to the primary market, but to secondary markets as well.

In the years that tart cherry volume regulations have been used, this issue has been addressed through use of an adjustment in order to achieve an optimum supply of cherries in the marketplace. Once a surplus has been computed (deducting the optimum from the available supply), the sales to secondary markets are added back to the surplus as an economic adjustment. The Board's recommended amendment would revise the procedures currently used in calculating the optimum supply. Under its proposal, the optimum supply would be equal to the 3-year average sales in primary markets (total sales less sales to markets eligible for diversion credit) plus the target carryout. This would simplify the method of arriving at an optimum supply figure and would be easier for tart cherry growers and processors to understand. Therefore, any regulatory impact on growers or handlers would be minimal or non-existent.

The record evidence supports the conclusion that this amendment would result in no extra costs to growers or processors in that any resulting level of volume regulation would be similar to what is currently in effect and its economic effect on the industry would be similarly analyzed in each instance. It would benefit industry members both large and small, however, because the process relating to the establishment of volume regulations would be less confusing and more readily understood by industry members. This process is used by growers and handlers in making seasonal decisions (including those relating to harvesting cherries). To the extent that this process is more readily understood, all in the industry should benefit.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that this rulemaking may be completed prior to the upcoming season. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of tart cherries grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of tart cherries grown in the production area as defined in the marketing agreement and order, as hereby proposed to be amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 930, § 930.16 is revised to read as follows:

§ 930.16 Sales Constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers and growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales constituency.

3. In § 930.50, paragraph (a) is revised to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years, reduced by the average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of restricted percentage cherries, to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

Dated: December 29, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–203 Filed 1–4–00; 8:45 am]

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Part VI

Department of Commerce

National Telecommunications and Information Administration

Technology Opportunities Program (formerly known as the Telecommunications and Information Infrastructure Assistance Program); Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

DOCKET NUMBER: [981203295–9313–03; CFDA 11.552]

RIN 0660–ZA06

Technology Opportunities Program (formerly known as the Telecommunications and Information Infrastructure Assistance Program)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Availability of Funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issues this Notice describing the conditions under which applications will be received under the Technology Opportunities Program (TOP) and how NTIA will determine which applications it will fund.[1] TOP promotes the widespread use and availability of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for information infrastructure projects, this program will help develop a nationwide, interactive, broadband information infrastructure that is accessible to all Americans, in rural as well as urban areas.

DATES: Complete applications for the Fiscal Year 2000 TOP grant program must be mailed or hand-carried to the address indicated below and received by NTIA no later than 9:00 p.m. EST, March 16, 2000.

ADDRESSES: Applications must be mailed to: Technology Opportunities Program National Telecommunications and Information Administration U.S. Department of Commerce 1401 Constitution Avenue, NW HCHB, Room 4092, Washington, D.C. 20230.

or-hand-delivered to:
Technology Opportunities Program, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 1874, Herbert Clark Hoover Building 1401 Constitution Avenue, NW, Washington, D.C. 20230.

Room 1874 is located at entrance #10 on 15th Street NW, between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION, CONTACT: Stephen J. Downs, Director of the Technology Opportunities Program. Telephone: 202/482–2048; fax: 202/501–5136; e-mail: top@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Program Purposes

NTIA announces the seventh annual round of a competitive matching grant program, the Technology Opportunities Program (TOP). TOP promotes the development, widespread availability, and use of advanced telecommunications and information technologies to serve the public interest.

To accomplish this objective, TOP will provide matching grants to state, local, and tribal governments;[2] non-profit community-based organizations; non-profit health care providers and public health institutions; schools; libraries; museums; colleges; universities; public safety providers; and other non-profit entities. TOP will support projects that improve the quality of, and the public's access to, cultural, educational, and training resources; reduce the cost, improve the quality, and/or increase the accessibility of health care and public health services; promote responsive public safety services; improve the effectiveness and efficiency of government and public services; and foster communication, resource-sharing, and economic development within communities, both rural and urban.

Authority

Title II of the Commerce, Justice, and State Appropriations Act for Fiscal Year 2000, Incorporated by Reference in the Consolidated Appropriations Act for FY 2000, Pub. L. No. 106–113, ''Division B, Section 1000(a)(1).''

Funding Availability

Approximately $12.5 million is available for federal assistance. A small amount of funds that have been deobligated from grants awarded in previous fiscal years may also be available for Fiscal Year 2000 grants. Based on past experience, NTIA expects this year's grant round to be very competitive. In Fiscal Year 1999, NTIA received over 700 applications collectively requesting more than $250 million in grant funds. From these applications, the Department of Commerce announced 43 awards totaling $17.6 million in federal funds.

An applicant may request up to $600,000 in total federal support. Based on previous grant rounds, TOP anticipates that the average size of a grant award will be approximately $375,000 with a grant period lasting between two and three years.

Eligible Organizations

Non-profit entities; state, local, and tribal governments; and colleges and universities are eligible to apply. Although individuals and for-profit organizations are not eligible to apply, they are encouraged to participate as project partners.

Matching Funds Requirements

Grant recipients under this program will be required to provide matching funds toward the total project cost. Applicants must document their capacity to provide matching funds. Matching funds may be in the form of cash or in-kind contributions. Grant funds under this program are usually released in direct proportion to local matching funds utilized and documented as having been expended. NTIA will provide up to 50 percent of the total project cost, unless the applicant can document extraordinary circumstances warranting a grant of up to 75 percent.

Generally, federal funds may not be used as matching funds, except as provided by federal statute. If you plan to use funds from a federal agency, you should contact the federal agency that administers the funds in question and obtain documentation from that agency's Office of General Counsel to support the use of federal funds for matching purposes.

Completeness of Application

TOP will initially review all applications to determine whether all required elements are present and clearly identifiable. The required elements are listed and described in the Guidelines for Preparing Applications—Fiscal Year 2000. Each of the required elements must be present and clearly identified. Failure to do so may result in rejection of the application.

Application Deadline

As noted above, complete applications for the Fiscal Year 2000 TOP grant program must be received by NTIA no later than 9:00 P.M. EST, March 16, 2000. A postmark date is not sufficient. Applications which have been provided to a delivery service on or before March 15, 2000, with ''delivery guaranteed'' before 9:00 P.M. on March 16, 2000, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed above guaranteed prior to the closing date and time. Applications will not be accepted via facsimile

[1] Please note that TOP was formerly known as the Telecommunications and Information Infrastructure Assistance Program (TIIAP).

[2] American Indian Tribes and Alaska Native Villages.

machine transmission or electronic mail. NTIA anticipates that it will take approximately six months to complete the review of applications and make final funding decisions.

Program Funding Priorities

NTIA supports innovative and exemplary projects that can serve as models for using information infrastructure in the public and non-profit sectors and thereby contribute to the development of an advanced, nationwide network that will ultimately offer broadband communication services to all.[3]

NTIA believes that every project supported under TOP should be a nationally significant demonstration of how telecommunications and information technologies can be used to extend valuable services and opportunities to all Americans, especially the underserved.[4] In addition, the development of an advanced information infrastructure accessible by all depends upon the contribution of a wide variety of skills, ideas, and perspectives. Therefore, TOP-supported projects should, to the greatest degree possible, reach out to all members of a community and catalyze partnerships to help reduce the digital divide.[5] Because important networking efforts may also occur outside of the United States, TOP projects may benefit from linkages to international efforts.

TOP defines innovation broadly. It can encompass, but is not restricted to, a demonstration of broadband or other cutting edge technologies, a new application of proven technologies, a creative strategy for overcoming traditional barriers to access, a new configuration of existing information resources, or the use of network technologies in a unique setting.

NTIA also expects each TOP project to serve as a national model and offer new and practical insights into the use of network technologies. TOP emphasizes the application of technology to meet people's needs, and not simply on the technology as an end in itself. Therefore, each project should identify specific problems or needs in a community, use network technologies to offer concrete solutions, and produce measurable outcomes.

A TOP project is more than simply adding technology to address a problem, or incrementally modify an existing process. Projects are expected to apply technology creatively and, in so doing, bring about meaningful changes in how services are provided and in the relationships between an organization and its partners and clients.

For FY 2000, TOP is especially interested in projects developed by smaller, locally-based organizations that both serve and represent underserved communities across the nation. For example, these organizations may include but are not limited to: community-based organizations; small non-profits; colleges and universities serving rural communities; Minority Serving Institutions; and organizations representing Empowerment Zones and Enterprise Communities.[6] TOP wants to build the capacity of organizations that work closely with underserved communities. These non-profits often are able to understand the local dynamics that are helpful in defining the problems and creating community-driven, successful solutions.

For the FY 2000 grant competition, TOP is also especially interested in projects that propose to use advanced network technologies to enhance the quality and efficiency of services delivered through non-profit organizations. Driven by research efforts in the private sector, academia, and the federal government, technological advances promise to improve significantly the quality of today's networks. For example, broadband networks will afford the opportunity to deliver immense amounts of data quickly to the desktop, and emerging wireless networks will give end users greater flexibility in how and when they can access information. TOP encourages applicants to explore creatively the potential of these and other advanced technologies.

In previous fiscal years, NTIA supported planning projects whose primary goal was to develop strategies for the development of information infrastructure applications. Due to the limited amount of funds available to the program, the emphasis for Fiscal Year 2000 is on projects that deploy, use, and evaluate the use of information infrastructure applications. NTIA will, however, support projects that incorporate some planning activities as part of the proposed project.

In FY 2000, TOP will support projects in four application areas: Community Networking and Services, Lifelong Learning and the Arts, Health, and Public Safety.[7] Each application will be reviewed with other applications in the same area. TOP is especially interested in projects that cut across application areas to better serve the needs of individuals and communities. Because multiple organizations often share the same end users, TOP encourages applications in which the use of network technology enables partners in different disciplines (e.g., health, education, and public safety) to share information. For example, local government and community-based organizations that work to serve the same families could benefit by increasing coordination and information sharing through the use of network technology.

The four application areas are described below.

Community Networking and Services

Community Networking and Services encompasses Community Networking and Public Services which, in previous years, constituted separate application areas.

Projects in this area provide innovative approaches to strengthen communities, deliver services to people in need, and address the needs of special communities, such as seniors or individuals with disabilities. Community Networking and Services focuses on an array of projects that enable a broad range of community residents and organizations to communicate and share information; to improve the delivery of vital social and administrative services to individuals with a range of needs; to enhance economic and community development through the coordination, delivery, and redefinition of vital services; and to participate in civic activities.

Examples of Community Networking and Services projects may include, but would not be limited to: community information systems that allow end users to draw upon an expanding variety of information resources and customize the output to meet specific goals; online mechanisms for social services delivery that allow multiple

[3] "Information infrastructure" includes telecommunication networks, computers, other end-user devices, software, standards, and skills that collectively enable people to connect to each other and to a vast array of services and information resources.

[4] "Underserved" refers to individuals and communities that are subject to barriers that limit or prevent their access to the benefits of network technologies or vital services. These barriers may be technological, geographic, economic, physical, linguistic, or cultural.

[5] More details on the growing gap in access to telecommunications and information technology in America can be found in NTIA's report, Falling through the Net: Defining the Digital Divide. This report is available on the Internet at NTIA's home page, http://www.ntia.doc.gov.

[6] Minority Serving Institutions include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities.

[7] Please note that this year, TOP has combined the FY 1999 application areas of Community Networking and Public Services into a single application area.

stakeholder organizations to link services, where appropriate, and thereby reduce overall administrative burdens on themselves and their clients; innovative access models that create mechanisms for reaching out to populations whose access to information tools may have been limited, or prevented, by geographic barriers, economic distress, linguistic or acculturation problems, age, or simple distance; economic development models that use information technologies to promote self-sufficiency among individuals and families and or employ emerging technologies to capture and share demographic and/or environmental information to allow community groups and individuals to devise creative strategies for economic revitalization.

Lifelong Learning and the Arts

Projects in this area seek to improve education and training for learners of all ages and provide cultural enrichment through the use of information infrastructure in both traditional and non-traditional settings. While TOP will continue to support a full range of projects in the Lifelong Learning and the Arts application area, this year TOP is particularly interested in projects which use network-based technology to deliver training and instruction to lifelong learners in non-traditional settings such as homes, community centers, and workplaces.

Examples of Lifelong Learning and the Arts projects may include, but would not be limited to: projects that explore creative partnerships among schools, libraries, museums, colleges, or universities to deliver network-based learning resources; projects linking workplaces and job-training sites to educational institutions; projects that enrich communities by delivering on-line informational, educational, and cultural services from public libraries, museums, and other cultural centers; and projects that allow users to collaborate in the creation of cultural works or participate actively in meaningful on-line learning exchanges.

Health

Projects in this area involve the use of information infrastructure in the delivery of health care and public health services.

Examples of Health projects may include, but would not be limited to: systems that improve the social and medical models of care to consumers in their place of residence; telemedicine systems that offer integrated approaches to extending and integrating medical and dental expertise to rural or underserved urban areas or non-traditional settings; projects designed to improve communication, collaboration and knowledge among and between health care providers and patients to empower consumers to participate jointly in their health care; projects to improve access and timeliness of care for those in emergency situations and explore various methods to extend services beyond the emergency room; projects that integrate technology to assess community needs and develop innovative health technology models of care delivery across the care continuum; projects that integrate triage mechanisms into improving care delivery for the uninsured, under insured, and low income populations; and networks or information services aimed at disease prevention and health promotion.

Public Safety

Projects in this area will seek to increase the effectiveness of law enforcement agencies, the court system, emergency, rescue, and fire departments, or other entities involved in providing safety services that respond to, prevent, or intervene in crises.

Examples of Public Safety projects may include, but would not be limited to: projects that facilitate information exchange among public safety agencies located in single or multiple geographic areas to increase efficiency and share resources, including spectrum resources; projects that provide information in a timely manner to ''first-response officials'' and assist agencies in on-the-spot situation analysis; projects that advance the capabilities of public safety agencies to identify individuals involved in incidents; applications that reduce risks to responding units and the public; projects that help public safety agencies provide community outreach services; and projects that aim to increase the safety and security of children and reduce domestic violence.

Limitations on Project Scope

Projects funded by TOP must meet the Program Funding Priorities described in this Notice. Projects must involve innovative approaches to the delivery of useful, practical services in real-world environments within the grant award period. Listed below are types of projects TOP *will not support* in Fiscal Year 2000.

(1) One-Way Networks. TOP *will not support* construction or extensions of one-way networks, that is, networks that deliver information to a passive audience; all networks and services proposed for TOP support must be *interactive*.[8] For example, TOP will not fund one-way broadcast systems, tape duplication and/or delivery projects, or any project that does not permit the end user in some fashion to select the information he or she will receive.

(2) Single-Organization Projects. TOP *will not support* projects whose primary emphasis is on the internal communications needs of a single organization, even if the organization has a considerable number of offices in different cities or regions of the country. For example, TOP will not consider projects that create or expand Local Area Networks or internal e-mail systems whose end users are principally, or exclusively, staff members of a single organization. However, TOP will support applications that extend communications among multiple organizations and agencies within a governmental jurisdiction. Projects should, to the maximum degree feasible, include appropriate partnerships, with plans for inter-organizational communications among the partners.

(3) Replacement or Upgrade of Existing Facilities. TOP *will not support* any projects whose purpose is to upgrade or replace existing systems, add workstations or servers to existing networks, or complete the installation of a network.

In addition, TOP *will not support projects whose primary purpose* is to develop content, hardware, or software, to provide training on the use of the information infrastructure, or to build voice-based systems.

(1) Content Development Projects. Many projects necessarily involve some modification or development of content.[9] Therefore, TOP will support projects in which the creation or conversion of content is part of a larger effort to utilize information infrastructure technologies to address real-world problems. However, TOP will not support projects whose primary purpose is to develop data resources, or in any other way produce information content. For example, TOP *will not* consider projects which are designed only to develop curriculum, create databases, convert existing paper-based information to a digital format, digitize

[8] ''Interactivity'' is defined as the capacity of a communications system to allow end users to communicate directly with other users, either in real time (as in a video teleconference) or on a store-and-forward basis (as with electronic mail), or to seek and gain access to information on an on-demand basis, as opposed to a broadcast basis.

[9] ''Content development'' refers to the creation of information resources, such as databases or World Wide Web sites, for the purpose of dissemination through one or more on-line services.

existing graphics collections, or establish World Wide Web sites.

(2) Hardware or Software Development Projects. Some projects may require limited software development or the customization or modification of existing software or hardware in order to meet particular end-user requirements or to enable the exchange of information across networks. However, the creation of a software or hardware product *cannot* be a project's primary purpose.

(3) Training Projects. While TOP does consider training to be an essential aspect of most implementation projects, TOP *will not* support projects whose primary purpose is to provide training in the use of software applications, Internet use, or other use of information infrastructure.

(4) Voice-based Systems. Two-way, interactive voice networks are an important element of the existing information infrastructure. Voice as a means for conveying information and voice input tools play critical roles in ensuring people with disabilities have access to network technology. However, TOP *will not* support projects whose primary purpose is to either build or install voice-based communication networks such as call centers, two-way radio networks, or 800 MHz radio systems.

Review Criteria

Reviewers will review and rate each application using the following criteria. The relative weights of each criterion are identified in parentheses.

1. Project Purpose (15%)

Each application will be judged on the overall purpose of the proposed project and its potential impact on a community. In assessing the ''Project Purpose,'' reviewers will examine the degree to which the applicant clearly: defines the problem(s) within the community to be served and describes its severity; proposes creative and practical means of addressing the community's problem(s) employing network technologies; and identifies anticipated outcomes and potential impacts that are both realistic and measurable. Reviewers will also assess the degree to which an applicant convincingly links the three major elements—problem(s), solution(s), and outcomes.

Reviewers will assess the degree to which the project targets underserved communities and populations, and the degree to which the proposed project will address the circumstances and levels of distress (such as poverty, high unemployment, low educational achievement, high crime rate, poor health status, etc.) they face.

2. Innovation (15%)

As noted in the section on ''Program Funding Priorities,'' reviewers will assess innovation broadly, examining both the technology to be used and the application of technology in a particular setting, to serve a particular population, or to solve a particular problem. Reviewers will also assess the degree to which the project would bring about new and practical changes in how the applicant provides services and enhances relationships between its partners and clients.

When rating the degree to which an application demonstrates innovation, reviewers will use their experience as experts in their respective fields to determine whether a proposed project introduces a unique or new approach and extends the state-of-the-art in a given application area. Reviewers will examine each project in a national context and ask: (1) how an application compares with, complements, or improves upon other activities in a given application area, and (2) what insight(s) a proposed project could add to what is known about using network technologies in a given application area.

3. Diffusion Potential (15%)

The innovations and approaches to be demonstrated in any proposed project should contain the potential to be diffused broadly throughout the country. NTIA expects that each awarded project will serve as a model for other communities to follow.

To assess this potential for diffusion, reviewers will consider four factors:

(1) the degree to which the problem identified by the applicant is common to many communities;

(2) the relative advantage of the project's innovations over established approaches to addressing the specified problems;

(3) the ease of replication and adaptation, based on considerations such as cost and complexity; and

(4) the applicant's plans to disseminate actively the knowledge gained from the project's successes and failures.

4. Project Feasibility (15%)

In assessing the feasibility of each application, reviewers will focus on four issues: the technical approach, the qualifications of the project staff, the proposed budget and the implementation schedule, and the applicant's plan for sustaining the project beyond the grant period.

In assessing technical approach, reviewers will examine how the proposed system would work, how it would operate with other systems, technological alternatives that have been considered, designs for system maintenance, periodic upgrades, and plans to adapt to unforeseen developments. Applicants are expected to make use of existing infrastructure and commercially available telecommunications services, unless extraordinary circumstances require the construction of new network facilities.

In assessing the qualifications of the project team, reviewers will assess the applicant and its partners to determine if they have the resources, expertise, and experience necessary to undertake, evaluate, and complete the project and disseminate results within the proposed period.

Reviewers will analyze the budget in terms of clarity and cost-effectiveness. The proposed budget should be appropriate to the tasks proposed and sufficiently detailed so that reviewers can easily understand the relationship of items in the budget to the project narrative. Reviewers also will assess the degree to which the implementation process is comprehensive and reasonable.

Finally, reviewers will examine the potential long-term viability of the applicant's plans. Reviewers will consider the economic circumstances of the community or communities to be served by the proposed project and the applicant's strategies to sustain the project after the completion of the grant.

5. Community Involvement (15%)

Each application will be rated on the overall level of community involvement in the development and implementation of the proposed project. Reviewers will examine the breadth of community involvement to ensure it includes the development of partnerships among unaffiliated organizations, from the public, non-profit, or private sectors, as an integral part of each project.[10] TOP considers partners to be organizations that supply cash or in-kind resources and/or play an active role in the planning and implementation of the project. Reviewers will:

(1) examine the steps the applicant has taken to engage and sustain the involvement of a variety of community stakeholders. Reviewers will look for evidence of demand, from the community, the end users, and the

[10] ''Unaffiliated'' organizations are institutions that do not have formal associations or existing relationships with the applicant.

potential beneficiaries, for the services proposed by the project;

(2) consider the degree of attention paid to the needs, skills, working conditions, and living environments of the targeted end users.[11] Reviewers will also consider the extent to which applicants involve representatives from a broad range of potential users in both the design and implementation of the project and consider the varying degrees of abilities of all end users, including individuals with disabilities;

(3) assess the applicant's plans for training end users, upgrading their skills, and building community awareness and knowledge of the project;

(4) evaluate the steps applicants have taken to involve and document the support of a variety of stakeholder groups and organizations; and

(5) examine the applicant's efforts to safeguard the privacy of the project's end users and beneficiaries.[12] In circumstances where proprietary or sensitive individual data are involved, reviewers will closely examine the applicant's strategies for addressing the privacy and confidentiality of user information.

6. Reducing Disparities (15%)

Reviewers will assess the degree to which each application addresses barriers which limit a community's or a group's access to the information infrastructure. These barriers may be technological, geographic, economic, physical, linguistic, or cultural. For example,

(1) a rural community may be geographically isolated from information resources and lack local technical expertise to help install and manage the network infrastructure;

(2) an inner city neighborhood may contain large numbers of potential end users who lack the technical expertise and financial resources to access the information infrastructure; or

(3) people with disabilities may need a variety of special hardware or software interfaces to facilitate their use of the information infrastructure.

Reviewers will assess evidence of community need in terms of access to telecommunications and network resources and the applicant's proposed strategies for overcoming barriers to the access and use of information technologies. Reviewers will focus on the applicant's strategies for reaching out to targeted groups and for tailoring services which address the learning mechanisms, attitudes, abilities, and customs of the community.

7. Evaluation and Documentation (10%)

Each application will be rated on its potential to evaluate and document the effectiveness and efficiency of the proposed solution(s) and anticipated outcome(s) of the project.

Reviewers will assess the degree to which the evaluation links to the overall formulation of project goals and objectives (i.e., the problem, solution, and anticipated outcomes identified in the ''Project Purpose'' section) and the Review Criteria treated below.

Applicants will be rated on the extent to which their documentation plans include effective record keeping strategies that will assist in the applicant's assessment of the project and facilitate future evaluations of the applicant's efforts.

When examining an applicant's proposed evaluation efforts, reviewers will assess the evaluation design, the implementation plan for the evaluation, and the allocation of resources (i.e., budget, staff, and management) for evaluation. Reviewers will also analyze the evaluation questions; the methodological approach for answering the evaluation questions; how data will be collected; and how the data will be analyzed. Finally, reviewers will assess the qualifications of any proposed evaluators.

Eligible Costs

Eligible Costs. Allowable costs incurred under approved projects shall be determined in accordance with applicable federal cost principles, i.e., OMB Circular A–21, A–87, A–122, or Appendix E of 45 C.F.R. Part 74. If included in the approved project budget, TOP will allow costs for personnel; fringe benefits; computer hardware, software, and other end-user equipment; telecommunication services and related equipment; consultants, evaluators, and other contractual services; travel; rental of office equipment, furniture, and space; and supplies. All costs must be reasonable and directly related to the project.

Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant federal agency or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Ineligible Costs

Costs associated with the construction or major renovation of buildings are not eligible. While costs for the construction of new network facilities are eligible costs, applicants are expected to make use of existing infrastructure and commercially available telecommunications services. Only under extraordinary circumstances will the construction of new network facilities be approved. Costs of the professional services, such as instruction, counseling, or medical care, provided via a network supported through this program are not eligible.

Note that costs that are ineligible for TOP support may not be included as part of the applicant's matching fund contribution.

In addition, the Appropriations for Fiscal Year 2000 places restrictions on eligible costs for applicants that are recipients of Universal Service Fund discounts and applicants receiving assistance from the Department of Justice's Regional Information Sharing Systems Program as part of the project costs. This statute provides:

That notwithstanding any other provision of law, no entity that receives telecommunications services at preferential rates under section 254(h) of the Act (47 U.S.C. 254(h)) or receives assistance under the regional information sharing systems grant program of the Department of Justice under part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h) may use funds under a grant under this heading to cover any costs of the entity that would otherwise be covered by such preferential rates or such assistance, as the case may be.[13]

Accordingly, recipients of the above-described preferential rates or assistance are prohibited from including any costs that would be covered by such preferential rates or assistance in their proposed TOP grant budget.

Award Period

Successful applicants will have between 12 and 36 months to complete their projects. While the completion time will vary depending on the complexity of the project, NTIA has found that most grant recipients require at least two years to complete and fully evaluate their projects. Accordingly,

[11] An ''end user'' is one who customarily employs or seeks access to, rather than provides, information infrastructure. An end user may be a consumer of information (e.g., a member of the public employing a touch-screen public access terminal); may be involved in an interactive communication with other end users; or may use information infrastructure to provide services to the public.

[12] Project beneficiaries are those individuals or organizations deriving benefits from a project's outcome(s). A project beneficiary may also, but not necessarily, be a project end user.

[13] Title II of the Commerce, Justice, and State Appropriations Act for Fiscal Year 2000, Incorporated by Reference in the Consolidated Appropriations Act for FY 2000, Pub. L. No. 106–113, ''Division B, Section 1000(a)(1).''

NTIA encourages applicants to propose projects that last two to three years.

Selection Process

NTIA will publish a notice in the **Federal Register** listing all applications received by TOP. Listing an application in such a notice merely acknowledges receipt of an application that will compete for funding with other applications. Publication does not preclude subsequent return or disapproval of the application, nor does it ensure that the application will be funded. The selection process will last approximately six months and involves four stages:

(1) During the first stage, each eligible application will be reviewed by a panel of outside readers, who have demonstrated expertise in both the programmatic and technological aspects of the application. The review panels will evaluate applications according to the review criteria provided in this Notice and make non-binding written recommendations to the program.

(2) Upon completion of the external review process, program staff may analyze applications as necessary. Program staff analysis will be based on the degree to which a proposed project meets the program's funding scope as described in the section entitled ''Limitations on Project Scope;'' the eligibility of costs and matching funds included in an application's budget; and the extent to which an application complements or duplicates projects previously funded or under consideration by NTIA or other federal programs.[14] The analysis of program staff will be provided to the TOP Director in writing.

The TOP Director then prepares and presents a slate of recommended grant awards to the Office of Telecommunications and Information Applications' (OTIA) Associate Administrator for review and approval.[15] The Director's recommendations and the Associate Administrator's review and approval will take into account the following selection factors:

1. the evaluations of the outside reviewers;
2. the analysis of program staff;
3. the degree to which the proposed grants meet the program's priorities as described in the section entitled ''Program Funding Priorities;''
4. the geographic distribution of the proposed grant awards;
5. the variety of technologies and strategies employed by the proposed grant awards;
6. the extent to which the proposed grant awards represent a reasonable distribution of funds across application areas;
7. the promotion of access to and use of the information infrastructure by rural communities and other underserved groups;
8. avoidance of redundancy and conflicts with the initiatives of other federal agencies; and
9. the availability of funds.

(3) Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the selection factors described above and the program's stated purposes as set forth in the section entitled ''Program Purposes.''

(4) After applications have been selected in this manner, negotiations will take place between TOP staff and the applicant. These negotiations are intended to resolve any differences that exist between the applicant's original request and what TOP proposes to fund, and if necessary, to clarify items in the application. Not all applicants who are contacted for negotiation will necessarily receive a TOP award. Final selections made by the Administrator will be based upon the recommendations by the Director and the OTIA Associate Administrator and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes as set forth in the section entitled ''Program Purposes,'' upon the conclusion of negotiations.

Use of Program Income

Applicants are advised that any program income generated by a proposed project is subject to special conditions. Anticipated program income must be documented appropriately in the project budget. In addition, should an application be funded, unanticipated program income must be reported to TOP, and the budget for the project must be renegotiated to reflect receipt of this program income. Program income means gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award. In addition, federal policy prohibits any recipient or subrecipient receiving federal funds from the use of equipment acquired with these funds to provide services to non-federal outside organizations for a fee that is less than private companies charge for equivalent services. This prohibition does not apply to services provided to outside organizations at no cost.

Policy on Sectarian Activities

Applicants are advised that on December 22, 1995, NTIA issued a notice in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested. Applicants for whom this policy may be relevant should read the policy that was published in the **Federal Register** at 60 FR 66491, Dec. 22, 1995.

Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this Notice. However, under extraordinary circumstances and when it is in the best interest of the federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this Notice. Waivers may only be granted for requirements that are discretionary and not mandated by statute. Any request for a waiver must set forth the extraordinary circumstances for the request and be included in the application or sent to the address provided in the **ADDRESSES** section above. NTIA will not consider a request to waive the application deadline for an application until the application has been received.

Other Information

Electronic Information. Information about NTIA and TOP, including this document and the Guidelines for Preparing Applications—Fiscal Year 2000, can be retrieved electronically via the Internet using the World Wide Web. Use http://www.ntia.doc.gov to reach the NTIA home page and follow directions to ''Grants.'' TOP can also be reached via electronic mail at TOP@ntia.doc.gov.

Application Forms. Standard Forms 424 (OMB Approval Number 0348–0044), Application for Federal Assistance; 424A (OMB Approval Number 0348–0043), Budget Information—Non-Construction Programs; and 424B (OMB Approval Number 0348–0040), Assurances—Non-

[14] See discussion of ''Eligible Costs'' and ''Matching Funds Requirements'' in this Notice.

[15] The Office of Telecommunication and Information Applications is the division of the National Telecommunications and Information Administration that supervises NTIA's grant awards programs.

Construction Programs, (Rev 4–92), and other Department of Commerce forms shall be used in applying for financial assistance. These forms are included in the Guidelines for Preparing Applications—Fiscal Year 2000, which can be obtained by contacting NTIA by telephone, fax, or electronic mail, as described in the **ADDRESSES** section above. TOP requests one original and five copies of the application. Applicants for whom the submission of five copies presents financial hardship may submit one original and two copies of the application. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. In addition, all applicants are required to submit a copy of their application to their state Single Point of Contact (SPOC) offices, if they have one. For information on contacting state SPOC offices, refer to the Guidelines for Preparing Applications—Fiscal Year 2000.

Because of the high level of public interest in projects supported by TOP, the program anticipates receiving requests for copies of successful applications. Applicants are hereby notified that the applications they submit are subject to the Freedom of Information Act. To assist NTIA in making disclosure determinations, applicants may identify sensitive information and label it ''confidential.''

Type of Funding Instrument. The funding instrument for awards under this program shall be a grant.

Federal Policies and Procedures. Recipients and subrecipients are subject to all applicable federal laws and federal and Department of Commerce policies, regulations, and procedures applicable to federal financial assistance awards.

Pre-Award Activities. If an applicant incurs any project costs prior to the project start date negotiated at the time the award is made, it does so solely at its own risk of not being reimbursed by the government. Applicants are hereby notified that, notwithstanding any oral or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

No Obligation for Future Funding. If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Past Performance. Unsatisfactory performance of an applicant under prior federal financial assistance awards may result in that applicant's proposal not being considered for funding.

Delinquent Federal Debts. No award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department of Commerce are made.

Purchase of American Made Products. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

Name Check Review. All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management, honesty, or financial integrity.

Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosure—Any applicant that has paid or will pay for lobbying in connection with a covered federal action, such as the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities'' (OMB Control Number 0348–0046), as required under 15 CFR part 28, appendix B.

Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review. Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' It has been determined that this notice is a ''not significant'' rule under Executive Order 12866.

Bernadette McGuire-Rivera,

Acting Deputy Assistant Secretary for Communications and Information.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Mexican Haas avocados; published 12-6-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Shortraker and rougheye rockfish; published 12-6-99

Atlantic coastal fisheries cooperative management—

American lobster; published 12-6-99

FEDERAL COMMUNICATIONS COMMISSION

Television broadcasting:

Telecommunications Act of 1996; implementation—

Open video systems; published 1-5-00

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:

Insurance company general accounts; guidance; published 1-5-00

NUCLEAR REGULATORY COMMISSION

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Approved spent fuel storage casks; list additions; published 9-22-99

TRANSPORTATION DEPARTMENT

Air travel; nondiscrimination on basis of disability: Seating accomodations and collapsible electric wheelchair storage

Correction; published 1-5-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Agusta S.p.A.; published 1-5-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:

Central Arizona and New Mexico-West Texas; comments due by 1-10-00; published 11-10-99

Onions (Vidalia) grown in—

Georgia; comments due by 1-12-00; published 12-13-99

Spearmint oil produced in Far West; comments due by 1-12-00; published 12-13-99

AGRICULTURE DEPARTMENT

Farm Service Agency

Mediation; certified mediation program; comments due by 1-10-00; published 11-9-99

Program regulations:

Farm loan programs account servicing policies; servicing shared appreciation agreements; comments due by 1-10-00; published 11-10-99

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Farm loan programs account servicing policies; servicing shared appreciation agreements; comments due by 1-10-00; published 11-10-99

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Farm loan programs account servicing policies; servicing shared appreciation agreements; comments due by 1-10-00; published 11-10-99

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Farm loan programs account servicing policies; servicing shared appreciation agreements; comments due by 1-10-00; published 11-10-99

AGRICULTURE DEPARTMENT

Mediation; certified mediation program; comments due by 1-10-00; published 11-9-99

COMMERCE DEPARTMENT

National Institute of Standards and Technology

Fastener Quality Act; implementation; comments due by 1-14-00; published 12-15-99

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Sea turtle conservation; Pamlico Sound, NC; closure to mesh gillnet fishing; comments due by 1-10-00; published 12-16-99

Sea turtle conservation; shrimp trawling requirements

Turtle excluder device; comments due by 1-12-00; published 12-13-99

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish; comments due by 1-12-00; published 12-13-99

Gulf of Alaska groundfish; comments due by 1-12-00; published 12-13-99

DEFENSE DEPARTMENT

Acquisition regulations:

Voluntary consensus standards (OMB Circular A-119); comments due by 1-10-00; published 11-9-99

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Family member dental plan; comments due by 1-14-00; published 12-15-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Light-duty vehicles and trucks—

Pre-production certification procedures; compliance assurance programs; reconsideration petition; comments due by 1-14-00; published 12-17-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Internet telephony and computer based equipment; access by persons with disabilities; comments due by 1-13-00; published 11-19-99

Radio stations; table of assignments:

California; comments due by 1-10-00; published 12-8-99

Michigan; comments due by 1-13-00; published 12-8-99

Texas; comments due by 1-10-00; published 12-8-99

Television broadcasting:

Satellite Home Viewer Improvement Act; implementation—

Retransmission consent issues; comments due by 1-12-00; published 12-29-99

FEDERAL LABOR RELATIONS AUTHORITY

Equal Access to Justice Act; implementation:

Attorney fees regulations; comments due by 1-13-00; published 11-29-99

FEDERAL RESERVE SYSTEM

Truth in lending (Regulation Z):

Short-term cash advances (payday loans); comments due by 1-10-00; published 11-5-99

HEALTH AND HUMAN SERVICES

Child Support Enforcement Office

Child support enforcement program:

National Medical Support Notice; child support orders; health care coverage provisions; comments due by 1-14-00; published 11-15-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Columbian white-tailed deer; comments due by 1-14-00; published 12-29-99

Spikedace and loach minnow; comments due by 1-14-00; published 12-10-99

Marine mammals:

Incidental take during specified activities—

Beaufort Sea, AK; year-round oil and gas

industry operations; polar bears and Pacific walrus; comments due by 1-13-00; published 1-3-00

Incidental taking—

Beaufort Sea et al., AK; oil and gas industry operations; polar bears and Pacific walruses; comments due by 1-10-00; published 12-9-99

INTERIOR DEPARTMENT

National Park Service

Special regulations:

Denali National Park and Preserve, AK; traditional activities definition; comments due by 1-11-00; published 11-12-99

MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION

Federal Mine Safety and Health Review Commission

Procedural rules; comments due by 1-10-00; published 12-8-99

INTERIOR DEPARTMENT

National Indian Gaming Commission

Indian Gaming Regulatory Act:

Classification of games; comments due by 1-10-00; published 11-10-99

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:

Union of Concerned Scientists; comments due by 1-10-00; published 10-27-99

PERSONNEL MANAGEMENT OFFICE

Pay administration:

Payments during evacuation; comments due by 1-14-00; published 12-15-99

POSTAL SERVICE

Domestic Mail Manual:

SAVE verification procedures and revisions—

Combined postage payment standards; automation letter mail; comments due by 1-10-00; published 12-9-99

SECURITIES AND EXCHANGE COMMISSION

Investment advisers:

Broker-dealers deemed not to be investment advisers; comments due by 1-14-00; published 11-10-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

California; comments due by 1-11-00; published 11-12-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Air Cruisers Co.; comments due by 1-10-00; published 11-9-99

Airbus; comments due by 1-13-00; published 12-14-99

Bell; comments due by 1-14-00; published 11-15-99

Boeing; comments due by 1-10-00; published 11-24-99

British Aerospace; comments due by 1-10-00; published 12-9-99

CFM International; comments due by 1-12-00; published 12-13-99

Dassault; comments due by 1-10-00; published 12-9-99

Fokker; comments due by 1-12-00; published 12-13-99

Israel Aircraft Industries, Ltd.; comments due by 1-10-00; published 12-9-99

McDonnell Douglas; comments due by 1-14-00; published 11-30-99

Transport category airplanes—

Mode ''C'' transponders with single Gillham code altitude input; comments due by 1-11-00; published 11-12-99

Airworthiness standards:

Special conditions—

CASA Model C-295 airplane; comments due by 1-12-00; published 12-13-99

Class D airspace; comments due by 1-14-00; published 12-3-99

Environmental impacts; policies and procedures implementation; comment request; comments due by 1-11-00; published 10-13-99

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad safety enforcement procedures:

Light rail transit operations on general railroad system; safety jurisdiction; joint agency policy statement with Federal Transit Administration; comments due by 1-14-00; published 11-1-99

TREASURY DEPARTMENT

Community Development Financial Institutions Fund

Community Development Financial Institutions Program; implementation; comments due by 1-14-00; published 11-1-99

TREASURY DEPARTMENT

Customs Service

Organization and functions; field organization, ports of entry, etc.:

Puget Sound, WA; port limits; comments due by 1-10-00; published 11-10-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Farm income averaging; comments due by 1-14-00; published 10-8-99

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.