



# Federal Register

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**Tuesday**

**May 9, 2000**



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- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** May 23, 2000 at 9:00 am.
- WHERE:** Office of the Federal Register  
Conference Room, Suite 700  
800 North Capitol Street, NW.  
Washington, DC  
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202-523-4538



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# Rules and Regulations

Federal Register

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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 HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

#### 12 CFR Part 1735

RIN 2550-AA08

### Implementation of the Equal Access to Justice Act

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is publishing a final regulation that implements the Equal Access to Justice Act (Act). The Act provides for the award of fees and other expenses to eligible individuals and entities that are parties to adversary adjudications before the Federal government. The regulation establishes procedures for the filing and consideration of applications for awards of fees and expenses in connection with adversary adjudications before OFHEO.

**DATES:** This final regulation is effective June 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Isabella W. Sammons, Associate General Counsel, telephone (202) 414-3790, (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** The Office of Federal Housing Enterprise Oversight (OFHEO) published a proposed regulation at 65 FR 7312 on February 14, 2000, that would implement the Equal Access to Justice Act (Act), 5 U.S.C. 504. OFHEO requested comments on the proposed regulation but did not receive any. Accordingly, the proposed

regulation is published as a final regulation without change.

#### Background

The Act provides that eligible individuals and entities that are parties to adversary adjudications before Federal agencies may file an application for an award of fees and other expenses. Eligible parties may receive an award for fees and other expenses incurred by them in connection with an adversary adjudication before OFHEO if they prevail over OFHEO, unless the position of OFHEO in the adversary adjudication was substantially justified. Eligible parties may also receive an award for fees and other expenses incurred by them in defending against a demand by OFHEO if the demand of OFHEO was substantially in excess of the decision in the adversary adjudication and was unreasonable when compared with such decision.

The Act requires that OFHEO and other Federal agencies establish procedures for the filing and consideration of applications for an award of fees and other expenses. Subpart A of the final regulation sets forth definitions, eligibility requirements, standards for awards, and allowable fees and expenses. Subpart B describes the information that must be included in an application for award and Subpart C provides the procedures for filing and consideration of an application for award.

The provisions of the final regulation reflect the 1996 amendments to the Act that were enacted pursuant to Pub. L. 104-121, 110 Stat. 862 (1996). Furthermore, to the extent appropriate, the provisions of the final regulation are substantially similar to the provisions of the Model Rules for Implementation of the Equal Access to Justice Act in Agency Proceedings, 1 CFR part 315 (1986) (51 FR 16659-16669 (May 6, 1986)).

#### Regulatory Impact

##### *Executive Order 12866, Regulatory Planning and Review*

The final regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or

geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final regulation has not been submitted to the Office of Management and Budget for review.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the final regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the final regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the number of applications for awards by small entities is expected to be extremely small.

##### *Paperwork Reduction Act*

The final regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### *Unfunded Mandates Reform Act of 1995*

The final regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, the final regulation implements specific statutory requirements. In addition, the final regulation does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

#### List of Subjects in 12 CFR Part 1735

Administrative practice and procedure, Equal access to justice.

Accordingly, for the reasons stated in the preamble, OFHEO adds part 1735 to chapter XVII of title 12 of the Code of Federal Regulations as follows:

### PART 1735—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

#### Subpart A—General Provisions

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- 1735.29 Payment of award.

**Authority:** 5 U.S.C. 504(c)(1).

#### Subpart A—General Provisions

##### § 1735.1 Purpose and scope.

(a) This part implements the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for award of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before OFHEO.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before OFHEO. However, if a court reviews the underlying decision of the adversary adjudication, an award for fees and

other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

##### § 1735.2 Definitions.

(a) *Adjudicative officer* means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

(b) *Adversary adjudication* means an administrative proceeding conducted by OFHEO under 5 U.S.C. 554 in which the position of OFHEO or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under 12 CFR part 1780. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will be an issue for resolution in the proceeding on the application for award.

(c) *Affiliate* means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

(d) *Agency counsel* means the attorney or attorneys designated by the General Counsel of OFHEO to represent OFHEO in an adversary adjudication covered by this part.

(e) *Demand of OFHEO* means the express demand of OFHEO that led to the adversary adjudication, but does not include a recitation by OFHEO of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

(f) *Fees and other expenses* include reasonable attorney or agent fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, test, or project that is found by the agency to be necessary for the preparation of the eligible party's case.

(g) *Final disposition* means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(i) *Party* means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversary adjudication.

(j) *Position of OFHEO* means the position taken by OFHEO in the adversary adjudication, including the action or failure to act by OFHEO upon which the adversary adjudication was based.

##### § 1735.3 Eligible parties.

(a) To be eligible for an award of fees and other expenses under § 1735.4(a), a party must be a small entity as defined in 5 U.S.C. 601.

(b)(1) To be eligible for an award of fees and other expenses for prevailing parties under § 1735.5(b), a party must be one of the following:

(i) An individual who has a net worth of not more than \$2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an "individual" rather than the "sole owner of an unincorporated business" if the issues on which the party prevails are related primarily to personal interests rather than to business interests.

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; or

(v) Any other partnership, corporation, association, unit of local government, or organization that has a net worth of not more than \$7 million and not more than 500 employees.

(2) For purposes of eligibility under paragraph (b) of this section:

(i) The employees of a party include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees shall be included on a proportional basis.

(ii) The net worth and number of employees of the party and its affiliates shall be aggregated to determine eligibility.

(iii) The net worth and number of employees of a party shall be

determined as of the date the underlying adversary adjudication was initiated.

(c) A party that participates in an adversary adjudication primarily on behalf of one or more entities that would be ineligible for an award is not itself eligible for an award.

#### § 1735.4 Standards for awards.

(a) An eligible party that files an application for award of fees and other expenses in accordance with this part shall receive an award of fees and other expenses related to defending against a demand of OFHEO if the demand was in excess of the decision in the underlying adversary adjudication and was unreasonable when compared with the decision under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust. The burden of proof that the demand of OFHEO was substantially in excess of the decision and is unreasonable when compared with the decision is on the eligible party.

(b) An eligible party that submits an application for award in accordance with this part shall receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the position of OFHEO in the adversary adjudication was substantially justified or special circumstances make an award unjust. OFHEO has the burden of proof to show that its position was substantially justified and may do so by showing that its position was reasonable in law and in fact.

#### § 1735.5 Allowable fees and expenses.

(a) Awards of fees and other expenses shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in § 1735.6, an award for the fee of an attorney or agent may not exceed \$125 per hour and an award to compensate an expert witness may not exceed the highest rate at which OFHEO pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent,

or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(c) In determining the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party, the adjudicative officer shall consider the prevailing rate for similar services in the community in which the services were performed.

(d) Fees and other expenses incurred before the date on which an adversary adjudication was initiated will be awarded only if the eligible party can demonstrate that they were reasonably incurred in preparation for the adversary adjudication.

#### § 1735.6 Rulemaking on maximum rate for fees.

If warranted by an increase in the cost of living or by special circumstances, OFHEO may adopt regulations providing for an award of attorney or agent fees at a rate higher than \$125 per hour in adversary adjudications covered by this part. Special circumstances include the limited availability of attorneys or agents who are qualified to handle certain types of adversary adjudications. OFHEO will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553.

#### § 1735.7 Awards against other agencies.

If another agency of the United States participates in an adversary adjudication before OFHEO and takes a position that was not substantially justified, the award or appropriate portion of the award to an eligible party that prevailed over that agency shall be made against that agency.

#### §§ 1735.8—1735.9 [Reserved].

### Subpart B—Information Required from Applicants

#### § 1735.10 Contents of the application for award.

(a) An application for award of fees and other expenses under either § 1735.4(a) and § 1735.4(b) shall:

(1) Identify the applicant and the adversary adjudication for which an award is sought;

(2) State the amount of fees and other expenses for which an award is sought;

(3) Provide the statements and documentation required by paragraph (b) or (c) of this section and § 1735.12 and any additional information required by the adjudicative officer; and

(4) Be signed by the applicant or an authorized officer or attorney of the applicant and contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) An application for award under § 1735.4(a) shall show that the demand of OFHEO was substantially in excess of, and was unreasonable when compared to, the decision in the underlying adversary adjudication under the facts and circumstances of the case. It shall also show that the applicant is a small entity as defined in 5 U.S.C. 601.

(c) An application for award under § 1735.4(b) shall:

(1) Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of OFHEO in the adversary adjudication that the applicant alleges was not substantially justified;

(2) State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);

(3) State that the net worth of the applicant does not exceed \$2 million, if the applicant is an individual; or for all other applicants, state that the net worth of the applicant and its affiliates, if any, does not exceed \$7 million; and

(4) Include one of the following:

(i) A detailed exhibit showing the net worth (net worth exhibit) of the applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to determine whether the applicant qualifies as an eligible party;

(ii) A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

(iii) A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

**§ 1735.11 Request for confidentiality of net worth exhibit.**

(a) The net worth exhibit described in § 1735.10(c)(4)(i) shall be included in the public record of the proceeding for the award of fees and other expenses, except if confidential treatment is requested and granted as provided in paragraph (b) of this section.

(b)(1) The applicant may request confidential treatment of the information in the net worth exhibit by filing a motion directly with the adjudicative officer in a sealed envelope labeled "Confidential Financial Information." If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information by another party or the public shall be resolved in accordance with the Freedom of Information Act, 5 U.S.C. 552b, and the Releasing Information regulation at 12 CFR part 1710.

(2) The motion shall:

(i) Include a copy of the portion of the net worth exhibit sought to be withheld;

(ii) Describe the information sought to be withheld; and

(iii) Explain why the information is exempt from disclosure under the Freedom of Information Act and why public disclosure of the information would adversely affect the applicant and is not in the public's interest.

(iv) Be served on agency counsel but need not be served on any other party to the proceeding.

**§ 1735.12 Documentation of fees and expenses.**

(a) The application for award shall be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement shall be submitted for each entity or

individual whose services are covered by the application. Each itemized statement shall include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity.

**§§ 1735.13–1735.19 [Reserved].**

**Subpart C—Procedures for Filing and Consideration of the Application for Award**

**§ 1735.20 Filing and service of the application for award and related papers.**

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award shall be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers shall be computed in the same manner as in the underlying adversary adjudication.

**§ 1735.21 Answer to the application for award.**

(a) Agency counsel shall file an answer within 30 days after service of an application for award of fees and other expenses except as provided in paragraphs (b) and (c) of this section. In the answer, agency counsel shall explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1735.25.

(b) If agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing an answer. If agency counsel does not answer or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

**§ 1735.22 Reply to the answer.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1735.25.

**§ 1735.23 Comments by other parties.**

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

**§ 1735.24 Settlement.**

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application shall be filed with the proposed settlement.

**§ 1735.25 Further proceedings on the application for award.**

(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director of OFHEO under § 1735.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application

for award and shall be conducted as promptly as possible. The issue as to whether the position of OFHEO in the underlying adversary adjudication was substantially justified shall be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

**§ 1735.26 Decision of the adjudicative officer.**

(a) The adjudicative officer shall make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1735.25.

(b) The adjudicative officer shall issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision shall become the final decision of OFHEO after 30 days from the day it was issued, unless review is ordered under § 1735.27.

(c) In all initial decisions, the adjudicative officer shall include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer shall also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to § 1735.4(a), the adjudicative officer shall include findings and conclusions as to whether OFHEO made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to § 1735.4(b), the adjudicative officer shall include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of OFHEO was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether

special circumstance make the award unjust.

**§ 1735.27 Review by OFHEO.**

Within 30 days after the adjudicative officer issues an initial decision under § 1735.26, either the applicant or agency counsel may request the Director of OFHEO to review the initial decision of the adjudicative officer. The Director of OFHEO or his or her designee may also decide, on his or her own initiative, to review the initial decision. Whether to review a decision is at the discretion of the Director of OFHEO or his or her designee. If review is ordered, the Director of OFHEO or his or her designee shall issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under § 1735.25.

**§ 1735.28 Judicial review.**

Any party, other than the United States, that is dissatisfied with the final decision on an application for award of fees and expenses under this part may seek judicial review as provided in 5 U.S.C. 504(c)(2).

**§ 1735.29 Payment of award.**

To receive payment of an award of fees and other expenses granted under this part, the applicant shall submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the decision in the United States courts to the Director, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Washington, DC 20552. OFHEO shall pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has been sought by any party to the proceedings.

Dated: May 2, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00-11524 Filed 5-8-00; 8:45 am]

**BILLING CODE 4220-01-U**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2000-CE-04-AD; Amendment 39-11715; AD 2000-09-06]

**RIN 2120-AA64**

**Airworthiness Directives; Maule Aerospace Technology, Inc. M-4, M-5, M-6, M-7, MX-7, and MXT-7 Series Airplanes and Models MT-7-235 and M-8-235 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Maule Aerospace Technology, Inc. (Maule) M-4, M-5, M-6, M-7, MX-7, and MXT-7 series airplanes and Models MT-7-235 and M-8-235 airplanes. This AD requires you to inspect all Nicopress™ sleeve terminal ends for correct size compression, with adjustment or replacement, as necessary. This AD results from a report of the rudder cable slipping out of the Nicopress™ sleeve while one of the affected airplanes was landing. The actions specified by this AD are intended to detect and correct improper crimping of the Nicopress™ sleeve, which could cause a control cable to slip from the sleeve. This could result in loss of rudder, elevator, aileron, or flap control.

**DATES:** This AD becomes effective on May 30, 2000. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of May 30, 2000.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before June 23, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-04-AD, 901 Locust, Room 506, Kansas City, MO 64106.

You may get the service information referenced in this AD from Maule Aerospace Technology Inc., 2099 Georgia Highway 133 South, Moultrie, GA 31768; telephone: (912) 985-2045, facsimile: (912) 890-2402.

You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-04-AD, 901 Locust, Room 506, Kansas City, MO 64106; or at the Office of the Federal

Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, GA 30349; telephone: (770) 703-6078, facsimile: (770) 703-6097.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What Events Have Caused This AD?*

The FAA has received a report of the rudder cable slipping out of the Nicopress™ sleeve while a Maule Model M-7-235C airplane was landing. Investigation of this accident revealed that the Nicopress™ sleeve was not adequately crimped and was slightly larger than the gauge dimension.

*What Is the Cause of the Problem?*

Maule did not set a crimping tool to correct specification for the elevator and rudder cables that were installed on certain Maule airplane models on Type Certificate No. 3A23, Revision 26, dated April 6, 2000. Maule has no way of determining exactly what time frame the crimping tool was not set to specification. Each airplane utilizes approximately 27 Nicopress™ sleeves.

The airplane models affected are listed in the AD portion of this document.

*What Are the Consequences if the Condition Is Not Corrected?*

An improperly crimped Nicopress™ sleeve, if not detected and corrected, could cause a control cable to slip from the sleeve. This could result in loss of rudder, elevator, aileron, or flap control.

*Is There Service Information That Applies to This Subject?*

Maule has issued Mandatory Service Bulletin No. 20, dated December 27, 1999.

*What Are the Provisions of This Service Bulletin?*

The service bulletin:

- Includes procedures for inspection of all Nicopress™ sleeve terminal ends for correct size compression; and
- Specifies provisions for adjustment or replacement, as necessary.

**FAA's Determination and an Explanation of the Provisions of the AD**

*What Has FAA Decided?*

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, FAA has determined that:

- An unsafe condition exists or could develop on certain Maule M-4, M-5, M-6, M-7, MX-7, and MXT-7 series airplanes and Models MT-7-235 and M-8-235 airplanes of the same type design; and

- AD action should be taken in order to detect and correct improper crimping of the Nicopress™ sleeve, which could cause a control cable to slip from the sleeve.

*What Does This AD Require?*

This AD requires you to inspect all Nicopress™ sleeve terminal ends for correct size compression, with adjustment or replacement, as necessary.

*Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?*

Because the unsafe condition described in this document could result in loss of rudder, elevator, aileron, or flap control, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.plainlanguage.gov>.

The FAA specifically invites comments on the overall regulatory,

economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000-CE-04-AD." We will date stamp and mail the postcard back to you.

**Regulatory Impact**

These regulations 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, FAA has 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 is not a significant regulatory action under Executive Order 12866. We have determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation. You may obtain a copy of the evaluation (if required) from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

Accordingly, under 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. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**2000-09-06 Maule Aerospace Technology, Inc.:** Amendment 39-11715; Docket No. 2000-CE-04-AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers, certificated in any category:

**GROUP 1 AIRPLANES**

Models	Serial numbers
MX-7-160C	34001C.
M-7-260C	30001C through 30004C, 30007C through 30011C, 30013C, and 30014C.
M-7-420AC	29001C.
MX-7-180C	28001C through 28011C.
MT-7-260 ..	27001C and 27003C.
M-7-260 ....	26002C through 26007C.
M-7-235C	25001C through 25037C, 25040C, 25041C, and 25044C.
M-7-235A ..	24001C.
M-7-235B ..	23001C through 23056C, 23058C, and 23059C.
MX-7-180B	22001C through 22016C.
MXT-7-180A.	21001C through 21067C, 21070C, 21072C, 21076C, 21077C, 21079C, and 21081C.
MX-7-180A	20001C through 20063C.
MX-7-160 ..	19001C through 19046C.
MXT-7-160	17001C through 17008C.
MT-7-235 ..	18001C through 18041C, 18044C, and 18047C.
M-8-235 ....	15001C through 15005C.
MXT-7-180	14000C through 14095C.
MX-7-180 ..	11066C through 11097C.
MX-7-235 ..	10081C through 10122C.

**GROUP 1 AIRPLANES—Continued**

Models	Serial numbers
M-7-235 ....	4078C, 4080C, 4083C, 4086C, and 4089C through 4132C.
M-6-235 ....	7508C, 7510C, 7516C, and 7518C through 7521C.

**GROUP 2 AIRPLANES**

Models	Serial numbers
Bee Dee M-4.	3 through 14.
M-4 .....	3 through 94 (Bee Dee: 3-14; and M-4: 15-94).
M-4C .....	1C through 11C.
M-4S .....	1S, 2S, and 3S.
M-4T .....	1T, 2T, and 3T.
M-4-210 ....	1001 through 1045.
M-4-210C	1001C through 1117C.
M-4-220C	2001C through 2190C.
M-4-220S ..	2001S.
M-4-180C	3001C through 3006C.
M-5-200 ....	8015C and 8022C.
M-5-210C	6001C through 6206C.
M-5-220C	5001C through 5057C.
M-5-235C	7001C through 7248C, 7250C through 7353C, A7354C, A7355C, 7356C, 7357C, A7358C, 7359C, A7360C, A7361C, 7362C through 7365C, A7366C, A7367C, 7368C through 7376C, 7445C, 7451C, 7460C, 7467C, 7470C, 7478C through 7480C, 7484C through 7487C, and 7515C.
M-5-180C	8001C through 8014C, 8016C through 8019C, 8021C, 8023C through 8042C, 8044C through 8064C, and 8068C through 8094C.

**GROUP 2 AIRPLANES—Continued**

Models	Serial numbers
M-5-210T ..	9001C through 9010C.
M-6-235 ....	7249C, 7356C, 7379C through 7444C, 7446C through 7450C, 7452C through 7459C, 7461C through 7466C, 7468C, 7469C, 7471C through 7475C, 7488C through 7507C, 7509C, 7511C through 7514C, and 7517C.
M-6-180 ....	8020C, 8043C, and 8065C through 8067C.
M-7-235 ....	4001C through 4077C, 4079C, 4081C, 4082C, 4084C, 4085C, 4087C, and 4088C.
M-7-235 ....	12001C and 12002C. These airplanes were manufactured as Model M-7-235 airplanes and then modified in accordance with STC SA2661SO. This modification changed the model designation of these airplanes to M-7-420.
MX-7-235 ..	10001C through 10080C.
MX-7-180 ..	11001C through 11065C.
MX-7-420 ..	13001C through 13003C.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct improper crimping of the Nicopress™ sleeve, which could cause a control cable to slip from the sleeve. This could result in loss of rudder, elevator, aileron, or flap control.

(d) *What must I do to address this problem?* To address this problem, accomplish the following:

Action	Compliance time	Procedures
Inspect all Nicopress™ sleeve terminal ends for correct size compression..	For Group 1 airplanes: Within the next 25 hours time-in-service (TIS) after May 30, 2000 (the effective date of this AD); and.  For Group 2 airplanes: Within the next 100 hours TIS after May 30, 2000 (the effective date of this AD)..	Accomplish in accordance with the ACTION TO BE TAKEN AND TOOLS REQUIRED section of Maule Mandatory Service Bulletin No. 20, dated December 27, 1999.
Adjust or replace any terminal compressions that are outside of the limits specified in the service information..	Prior to further flight after the inspection required by this AD..	Accomplish in accordance with the ACTION TO BE TAKEN AND TOOLS REQUIRED section of Maule Mandatory Service Bulletin No. 20, dated December 27, 1999.
Do not install a Nicopress™ sleeve without assuring that the terminal compressions are within the limits specified in the service information..	As of May 30, 2000 (the effective date of this AD)..	Accomplish in accordance with the ACTION TO BE TAKEN AND TOOLS REQUIRED section of Maule Mandatory Service Bulletin No. 20, dated December 27, 1999.

(e) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

- (i) Your alternative method of compliance provides an equivalent level of safety; and
- (ii) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who

may add comments and then send it to the Manager, Atlanta ACO.

(2) 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 (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, GA 30349; telephone: (770) 703-6078; facsimile, (770) 703-6097.

(g) *What if I need to fly the airplane to another location to comply with this AD?* FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* You must accomplish the actions required by this AD in accordance with Maule Mandatory Service Bulletin No. 20, dated December 27, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Maule Aerospace Technology, Inc., 2099 Georgia Hwy. 133 South, Moultrie, GA 31768. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, MO, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 30, 2000.

Issued in Kansas City, Missouri, on April 27, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00-11176 Filed 5-8-00; 8:45 am]

BILLING CODE 4910-13-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 97-NM-244-AD; Amendment 39-11704; AD 2000-08-18]

RIN 2120-AA64

#### **Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, and Model MD-88 and MD-90-30 Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, and Model MD-88 and MD-90-30 airplanes, that requires replacement of the lanyard assembly pins of the evacuation slides with solid corrosion-resistant pins. This amendment is prompted by a report that, due to stress

corrosion on the lanyard pins, the arms of the lanyard assembly of the evacuation slide were found to be frozen. The actions specified by this AD are intended to prevent the improper deployment of the evacuation slide due to stress corrosion, which could delay or impede evacuation of passengers during an emergency.

**DATES:** Effective June 13, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, CA 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60).

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, WA; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; telephone (562) 627-5338; fax (562) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9 series airplanes, and Model MD-88 and MD-90-30 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on November 26, 1999 (64 FR 66417). That action proposed to require replacement of the lanyard assembly pins of the evacuation slides with solid corrosion-resistant pins.

#### **Comments Received**

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

#### **Support for Proposed AD**

One commenter supports the proposed AD. Another commenter states

that the proposed AD does not affect its fleet.

#### **Requests To Revise Applicability Statement of Proposed AD**

Two commenters request that the applicability statement of the proposed AD be revised to exclude freighter airplanes on which emergency evacuation slides have not been installed. The commenters state that such a revision would eliminate alternative method of compliance (AMOC) requests. The commenters did not provide any data to substantiate their request.

The FAA does not concur. The FAA is unable to verify that all freighter airplanes are not equipped with evacuation slides. Therefore, all affected freighter airplanes must be included in the applicability statement of the final rule. However, under the provisions of paragraph (c) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that replacement of the lanyard pins with solid corrosion-resistant pin are not necessary.

One commenter questions whether Boeing latch assembly, part number (P/N) 69-70843-1, should be included in the applicability statement of the proposed AD. The commenter states that the roll pin, P/N MS39086-140, which resulted in the corrosion problem, is present in the Boeing latch assembly, as well as the Douglas latch assembly, P/N's 3961899-1 and 3956939-501.

The FAA has determined that the subject Boeing latch assemblies are not susceptible to stress corrosion, and therefore, are not subject to the identified unsafe condition of this AD. Therefore, no change to the final rule is necessary.

#### **Requests for Alternative Method of Compliance (AMOC)**

One commenter requests that the FAA approve lanyard assembly pin, P/N MS16555-627, as an AMOC for the pin required by the AD (reference McDonnell Douglas Alert Service Bulletin DC9-25A357, dated February 11, 1997). The commenter states that this pin is shorter and would not require any machining. If the FAA does not approve the pin having P/N MS16555-627, the commenter requests that the FAA approve the installation of an unmodified pin, P/N MS16555-628, which would protrude from the latch assembly. The commenter states that both of these alternatives would not interfere with the operation of the lanyard or deployment of the slide and

would provide the same level of safety as the pin required by the AD.

The FAA does not concur. The FAA finds that the shorter pin would not provide an equivalent level of safety to that of the pin required by the AD, because the taper on the end of the shorter pin would not provide the same level of pin retention. The shorter pin could become loose and fall out of the latch, thus causing the latch to fail. The FAA also finds that a pin that extends past the surface of the latch could cause the latch to hang up and fail. Therefore, no change to the final rule is necessary.

One commenter requests that the proposed AD be revised to include an AMOC, which was approved by the airplane manufacturer, to eliminate the need of each airline making a request to the FAA on an individual basis. The commenter states that the AMOC involves a program to accomplish, among other things, an initial check of the lanyard and then to periodically check, clean, and refurbish the subject lanyards with new roll pins of the same P/N.

The FAA does not concur. Because Airplane Maintenance Programs vary from operator to operator, there are no assurances that each operator's Airplane Maintenance Program contains the identical actions required by this AD. However, under the provisions of paragraph (c) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such an AMOC would provide an acceptable level of safety.

### Conclusion

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

### Cost Impact

There are approximately 2,167 McDonnell Douglas Model DC-9 series airplanes, and Model MD-88 and MD-90-30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$144,000, or \$120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2000-08-18 McDonnell Douglas:**  
Amendment 39-11704. Docket 97-NM-244-AD.

**Applicability:** Model DC-9 series airplanes, and Model MD-88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9-25A357, Revision 02, dated May 28, 1998; and Model MD-90-30 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90-25A019, dated February 11, 1997; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 the improper deployment of the evacuation slide, which could delay or impede evacuation of passengers during an emergency, accomplish the following:

### Replacement

(a) Within 180 days after the effective date of this AD, replace the lanyard assembly pins of the evacuation slides with solid corrosion-resistant pins, in accordance with McDonnell Douglas Alert Service Bulletin MD80-25A357, dated February 11, 1997, Revision 01, dated March 16, 1998, or Revision 02, dated May 28, 1998 (for Model DC-9 series airplanes and Model MD-88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90-25A019, dated February 11, 1997 (for Model MD-90-30 airplanes); as applicable.

### Spares

(b) As of the effective date of this AD, no lanyard assembly, part number (P/N) 3961899-1 or P/N 3956939-501, shall be installed on any airplane unless that assembly has been modified in accordance with the requirements of paragraph (a) of this AD.

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

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

### 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.

### Incorporation by Reference

(e) The replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80-25A357, dated February 11, 1997; McDonnell Douglas Alert Service Bulletin DC9-25A357, Revision 01, dated March 16, 1998; McDonnell Douglas Alert Service Bulletin DC9-25A357, Revision

02, dated May 28, 1998; or McDonnell Douglas Alert Service Bulletin MD90-25A019, dated February 11, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 13, 2000.

Issued in Renton, Washington, on April 19, 2000.

Donald L. Rigglin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00-10288 Filed 5-8-00; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30029; Amdt. No. 422]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace

System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, June 10, 2000.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), 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 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and

safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95

Airspace Navigation (air).

Issued in Washington, D.C. on May 3, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 422 Effective Date: June 15, 2000]

Table with 3 columns: From, To, MEA. It lists color routes for Amber and Blue Federal Airways, including specific airway numbers and associated altitudes for various locations like Campbell Lake, AK NDB and Cape Lisburne, AK NDB/DME.

## REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 422 Effective Date: June 15, 2000]

From	To	MEA
*4,100—MOCA Hotham, AK NDB .....	Tin City, AK NDB/DME .....	*5,000
*4,300—MOCA Tin City, AK NDB/DME .....	Fort Davis, AK NDB .....	*7,000
*5,900—MOCA		
<b>Color Routes</b>		
<b>§ 95.60 Blue Federal Airway 4 Is Added To Read</b>		
Bishop, AK NDB .....	Utopia Creek, AK NDB .....	*7,000
*5,900—MOCA Utopia Creek, AK NDB .....	Evansville, AK NDB .....	*8,000
Evansville, AK NDB .....	Yukon River, AK NDB .....	*8,000
*6,600—MOCA		
<b>Color Routes</b>		
<b>§ 95.60 Blue Federal Airway 5 Is Added To Read</b>		
Cape Lisburne, AK NDB/DME .....	Point Hope, AK NDB .....	4,000
<b>Color Routes</b>		
<b>§ 95.60 Blue Federal Airway 8 Is Added To Read</b>		
Tin City, AK NDB/DME .....	Shishmaref, AK NDB .....	4,000
<b>Color Routes</b>		
<b>§ 95.4 Green Federal Airway 1 Is Added To Read</b>		
Mount Moffett, AK NDB/DME .....	Horth, AK FIX .....	8,000
*2,500—MOCA Horth, AK FIX .....	Mordi, AK FIX .....	*8,000
Mordi, AK FIX .....	Elfee, AK NDB .....	*8,000
<b>Color Routes</b>		
<b>§ 95.4 Green Federal Airway 4 Is Added To Read</b>		
Borland, AK NDB/DME .....	Woody Island, AK NDB .....	*10,000
<b>Color Routes</b>		
<b>§ 95.4 Green Federal Airway 4 Is Added To Read</b>		
Wood River, AK NDB .....	Iliamna, AK NDB/DME .....	*4,500
*3,000—MOCA		
<b>Color Routes</b>		
<b>§ 95.56 Green Federal Airway 16 Is Added To Read</b>		
Point Lay, AK NDB .....	Wainwright Village, AK NDB .....	*1,700
*1,200—MOCA Wainwright Village, AK NDB .....	Browerville, AK NDB .....	*1,600
*1,100—MOCA Browerville, AK NDB .....	Nuiqsut Village, AK NDB .....	1,600
Nuiqsut Village, AK NDB .....	Put River, AK NDB .....	*1,700
*1,200—MOCA		
<b>Color Routes</b>		
<b>§ 95.57 Green Federal Airway 17 Is Added To Read</b>		
Wainwright Village, AK NDB .....	Atqasuk, AK NDB .....	*1,600
*1,100—MOCA		
<b>Color Routes</b>		
<b>§ 95.58 Green Federal Airway 18 Is Added To Read</b>		
Hotham, AK NDB .....	Point Lay, AK NDB .....	*10,000
*6,000—MOCA 0 Point Lay, AK NDB .....	Atqasuk, AK NDB .....	2,300
<b>Color Routes</b>		
<b>§ 95.20 Red Federal Airway 1 Is Added To Read</b>		
St Paul Island, AK NDB/DME .....	Garrs, AK FIX .....	*4,600

## REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 422 Effective Date: June 15, 2000]

From	To	MEA
*2,700—MOCA Garrs, AK FIX .....	Saldo, AK NDB .....	4,600
<b>Color Routes</b>		
<b>§ 95.20 Red Federal Airway 2 Is Added To Read</b>		
Elfee, AK NDB .....	Port Heiden, AK NDB/DME .....	6,000
<b>§ 95.6001 Victor Routes—U.S.</b>		
<b>§ 95.6004 VOR Federal Airway 4 Is Amended To Read in Part</b>		
Saden, MO FIX .....	St Louis, MO VORTAC .....	*2,400
*1,700—MOCA		
<b>§ 95.6013 VOR Federal Airway 13 Is Amended To Read in Part</b>		
Farmington, MN VORTAC .....	*Wagnr, MN FIX .....	5,500
*5,500—MRA		
Wagner, MN FIX .....	Cinci, MN FIX .....	5,500
<b>§ 95.6077 VOR Federal Airway 77 Is Amended To Read in Part</b>		
Topeka, KS VORTAC .....	St Joseph, MO VORTAC .....	3,000
<b>§ 95.6159 VOR Federal Airway 159 Is Amended To Read in Part</b>		
Vero Beach, FL VORTAC .....	*Presk, FL FIX .....	2,900
*2,500—MRA		
Presk, FL FIX .....	Orlando, FL VORTAC .....	*2,100
*1,500—MOCA		
<b>§ 95.6189 VOR Federal Airway 189 Is Amended To Read in Part</b>		
Wright Brothers, NC VOR/DME .....	Darez, NC FIX .....	*6,000
*1,300—MOCA		
Darez, NC FIX .....	Tar River, NC VORTAC .....	*4,000
*2,600—MOCA		
<b>§ 95.6222 VOR Federal Airway 222 Is Amended To Read in Part</b>		
Lake Charles, LA VORTAC .....	Maxon, LA FIX .....	*2,000
*1,500—MOCA		
Maxon, LA FIX .....	*Wrack, LA FIX .....	**6,000
*3,000—MRA		
**1,600—MOCA		
Wrack, LA FIX .....	Mc Comb, MS VORTAC .....	*3,000
*2,000—MOCA		
<b>§ 95.6469 VOR Federal Airway 469 Is Amended To Read in Part</b>		
Relee, VA FIX .....	Exras, VA FIX .....	*8,000
*5,200—MOCA		
Exras, VA FIX .....	Brucy, VA FIX .....	*10,000
*6,100—MOCA		
<b>§ 95.6552 VOR Federal Airway 552 Is Amended To Read in Part</b>		
Lake Charles, LA VORTAC .....	Hatha, LA FIX .....	*2,000
*1,500—MOCA		
Hatha, LA FIX .....	Lafayette, LA VORTAC .....	2,800
<b>§ 95.6412 Hawaii VOR Federal Airway 12 Is Amended To Read in Part</b>		
Maggi, HI FIX .....	*Shark, HI FIX	NE BND
*16,000—MRA .....	.	
**1,200—MOCA .....	.	

From	To	MEA	MAA
<b>§ 95.7001 Jet Routes</b>			
<b>§ 95.7056 Jet Route No. 56 Is Amended To Read in Part</b>			
Salt Lake City, UT VORTAC ..... # MEA is established with a Gap in navigation signal coverage.	HAYDEN, CO VOR/DME .....	25000	45000
<b>§ 95.7600 Jet Route No. 600 Is Added To Read</b>			
Mount Moffett, AK NDB/DME .....	EL/FEE, AK NDB .....	18000	45000
<b>§ 95.7601 Jet Route No. 601 Is Added To Read</b>			
Port Heiden, AK NDB/DME .....	Cold Bay, AK VORTAC .....	18000	45000
Cold Bay, AK VORTAC .....	St Paul Island, AK NDB/DME .....	18000	45000
<b>§ 95.7603 Jet Route No. 603 Is Added To Read</b>			
Elfee, AK NDB .....	Dillingham, AK VOR/DME .....	18000	45000
<b>§ 95.7604 Jet Route No. 604 Is Added To Read</b>			
Borland, AK NDB/DME .....	Woody Island, AK NDB .....	18000	45000
<b>§ 95.7605 Jet Route No. 605 Is Added To Read</b>			
Biorka Island, AK VORTAC .....	Middleton Island, AK VOR/DME .....	23000	45000
<b>§ 95.7606 Jet Route No. 606 Is Added To Read</b>			
St Paul Island, AK NDB/DME .....	Saldo, AK NDB .....	180000	45000
<b>§ 95.7617 Jet Route No. 617 Is Added To Read</b>			
Homer, AK VORTAC .....	Johnstone Point, AK VORTAC .....	18000	45000
<b>§ 95.7619 Jet Route No. 619 Is Added To Read</b>			
Cape Newenham, AK NDB .....	St Paul Island, AK NDB/DME .....	18000	45000
<b>§ 95.7711 Jet Route No. 711 Is Added To Read</b>			
Sitka, AK NDB .....	Laire, AK FIX .....	18000	45000
Laire, AK FIX .....	Hinchinbrook, AK NDB .....	18000	45000
From	To	Changeover Points	
		Distance	From
<b>§ 95.8005 Jet Routes Changeover Points Airway Segment Is Added to Read</b>			
Homer, AK VORTAC .....	J627 Johnstone Pointe AK VORTAC .....	63	Homer
<b>95.1001 Direct Routes—U.S. Changover Points Color Routes Airway Segment is Added to Read</b>			
Campbell Lake, AK NDB .....	A7 Mineral Creek, AK NDB .....	69	Campbell Lake
Cape Lisburne, AK NDB .....	B2 Hotham, AK NDB .....	57	Cape Lisburne
Browerville, AK NDB .....	G16 Nuiqsut, AK NDB .....	82	Browerville, AK NDB
Hotham, AK NDB .....	G18 Point Lay, AK NDB .....	96	Hotham, AK, NDB
Point Lay, AK NDB .....	Atqasuk, AK NDB .....	50	Point Lay, AK NDB

[FR Doc. 00-11579 Filed 5-8-00; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 177

[Docket No. 98F-1019]

#### Indirect Food Additives: Polymers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles in contact with food. This action responds to a petition filed by BF Goodrich Specialty Chemicals.

**DATES:** This rule is effective May 9, 2000. Submit written objections and requests for a hearing by June 8, 2000.

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

**FOR FURTHER INFORMATION CONTACT:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS-205), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-418-3086.

**SUPPLEMENTARY INFORMATION:** In a notice published in the *Federal Register* of November 30, 1998 (63 FR 65793), FDA announced that a food additive petition (FAP 8B4631) had been filed by BF Goodrich Specialty Chemicals, 9911 Brecksville Rd., Cleveland, OH 44141. The petition proposed to amend the food additive regulations in § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles in contact with food.

In its evaluation of the safety of these resins, FDA has reviewed the safety of the additive itself, the starting materials used, and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain residual amounts of

methylene dianiline (MDA), which has been shown to cause cancer in test animals. MDA is produced when diphenylmethane diisocyanate (MDI), a starting material used in the manufacture of polyurethane resins, reacts with water. Residual amounts of reactants and manufacturing aids, such as MDA, are commonly found as contaminants in chemical products, including food additives.

#### I. Determination of Safety

Under the general safety standard of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney clause of the act (section 409(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984)).

#### II. Safety of Petitioned Use of the Additive

The petitioner determined the levels of three migrants extracted from the additive, polyurethane resins manufactured from MDI, 1,4-butanediol, and adipic acid. These three migrants were 1,4-butanediol, oligomers of the additive, and MDA (the hydrolysis product of MDI). FDA agrees that the determination of the levels of these three types of migrants are appropriate to evaluate the safe use of the additive. FDA estimates that the petitioned use of the additive will result in exposure to 1,4-butanediol of not more than 90 micrograms per person per day ( $\mu\text{g}/\text{p}/\text{d}$ ) while exposure to the other two migrants will be even lower (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such

low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by MDA, the carcinogenic chemical that may be present as an impurity in the additive. This risk evaluation of MDA has two aspects: (1) Assessment of exposure to the impurity from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

#### A. Methylene Dianiline

FDA has estimated the exposure to MDA from the petitioned use of the additive in the manufacture of cap liners intended to contact food to be no more than 4.1 parts per trillion in the daily diet, or 0.012  $\mu\text{g}/\text{p}/\text{d}$  (Refs. 1 and 5). The agency used data from a bioassay of MDA, sponsored by the National Toxicology Program, to estimate the upper-bound limit of lifetime human risk from exposure to MDA that may result from the proposed use of the additive (Ref. 3). The bioassay report showed that MDA ingestion produced tumors at multiple sites in both sexes of rats and mice.

Based on the agency's estimate that exposure to MDA will not exceed 0.012  $\mu\text{g}/\text{p}/\text{d}$ , FDA estimates that the upper-bound limit of lifetime human risk for MDA from the petitioned use of the subject additive is  $1 \times 10^{-8}$  or 1 in 100 million (Ref. 4). Because of numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to MDA is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to MDA would result from the petitioned use of the additive.

#### B. Need for Specifications

The agency also has considered whether specifications are necessary to control the amount of MDA present as an impurity in the additive. The agency finds that the specifications are not necessary for the following reasons: (1)

Because of the low level at which MDA may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to MDA is very low, less than 1 in 100 million.

**III. Conclusion on Safety**

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a component of cap liners for food-contact articles is safe, that the food additive will achieve its intended technical effect, and that the regulations in § 177.1210 should be amended as set forth below.

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

**IV. Environmental Impact**

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4631 (63 FR 65793, November 30, 1998). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

**V. Paperwork Reduction Act of 1995**

This final rule contains no collection of information. Therefore, clearance by

the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**VI. Objections**

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 8, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**VII. References**

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

1. Memorandum to the file dated May 19, 1999, from the Petitions Contract Working Group (HFS-205), concerning FAP 8B4631.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in *Chemical Safety*

*Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24-33, 1985.

3. "Carcinogenesis Studies of 4,4'-Methylenedianiline Dihydrochloride) (CAS Reg. No. 13552-44-8) in F344/N Rats and B6C3F<sub>1</sub> Mice (Drinking Water Studies)," National Toxicology Program Technical Report Series, No. 248, June 1983.

4. Memorandum dated January 28, 1999, from the Regulatory Policy Branch (HFS-206), to Executive Secretary, Quantitative Risk Assessment Committee (QRAC) (HFS-308), entitled "Estimation of the Upper-Bound Lifetime Risk for Methylene-4,4'-Dianiline (MDA): Subject of Food Additive Petition 8B4631 (BF Goodrich Specialty Chemicals)."

5. Memorandum dated May 13, 1999, from the Scientific Support Branch (HFS-207), entitled "FAP 8B4631 (MATS #1041)—Keller & Heckman (K & H), on Behalf of BF Goodrich Specialty Chemicals. Risk Assessment for Methylene Dianiline (MDA)."

**List of Subjects in 21 CFR Part 177**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

**PART 177—INDIRECT FOOD ADDITIVES: POLYMERS**

1. The authority citation for 21 CFR part 177 continues to read as follows:

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

2. Section 177.1210 is amended in table 1 in paragraph (b)(5) by alphabetically adding an entry to read as follows:

**§ 177.1210 Closures with sealing gaskets for food containers.**

- |     |   |   |   |   |
|-----|---|---|---|---|
| *   | * | * | * | * |
| (b) | * | * | * |   |
| (5) | * | * | * |   |

TABLE 1

List of substances	Limitations (expressed as percent by weight of closure-sealing gasket composition)
* * * * *	* * * * *
Polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid (CAS Reg. No. 26375-23-5).	For use only: No limitation on amount used, but for use only in closure gasket compositions used in contact with food types VI-A and VI-C (up to 15 percent alcohol) under conditions of use D, E, F, and G, as described in § 176.170(c) of this chapter, tables 1 and 2, respectively.
* * * * *	* * * * *

\* \* \* \* \*

Dated: April 28, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00-11478 Filed 5-8-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F-1910]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food. This action is in response to a petition filed by Cytec Industries, Inc.

DATES: This rule is effective May 9, 2000. Submit written objections and requests for a hearing by June 8, 2000.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 22, 1999 (64 FR 33306), FDA announced that a food additive petition (FAP 9B4675) had been filed by Cytec Industries, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington DC 20001. The petition

proposed to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) that the regulations in § 178.2010 should be amended as set forth below.

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

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4675. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

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

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 8, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is

made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

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

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

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

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

\* \* \* \* \*

(b) \* \* \*

Substances	Limitations
<p style="text-align: center;">* * * * *</p> <p>2-[4,6-Bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol (CAS Reg. No. 2725-22-6).</p> <p style="text-align: center;">* * * * *</p>	<p>For use only:</p> <ol style="list-style-type: none"> <li>1. At levels not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter in contact with food types I, II, IV-B, VI, VII-B, and VIII described in § 176.170(c) of this chapter, table 1, under conditions of use D through G as described in § 176.170(c), table 2, of this chapter.</li> <li>2. At levels not to exceed 0.1 percent by weight of polypropylene complying with § 177.1520(c) of this chapter, items 1.1a, 1.2, and 1.3 in contact with food under conditions of use A through H as described in § 176.170(c), table 2, of this chapter.</li> <li>3. At levels not to exceed 0.04 percent by weight of polyethylene and olefin copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.1c, 3.2a, and 3.2b having a minimum density of 0.94 gram per cubic centimeter, in contact with food under conditions of use A through H as described in § 176.170, table 2, of this chapter provided that the finished articles used in contact with fatty food types III, IV-A, V, VII-A, and IX as described in table 1 of § 176.170(c) of this chapter hold a minimum of 2 gallons (7.6 liters) of food.</li> <li>4. At levels not to exceed 0.4 percent by weight of ethylene copolymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.1c, 3.2a, and 3.2b, having a density of less than 0.94 gram per cubic centimeter, in contact with food under conditions of use B through H, as described in § 176.170(c), table 2, of this chapter provided that the finished articles used in contact with fatty food types III, IV-A, V, VII-A, and IX hold a minimum of 5 gallons (18.9 liters) of food.</li> <li>5. At levels not to exceed 0.04 percent by weight of polyethylene having a density of less than 0.94 gram per cubic centimeter, and olefin polymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.3a, 3.3b, 3.4, 3.5, 3.6, 4, 5, and 6, in contact with food under conditions of use D through G as described in § 176.170(c) of this chapter, table 2, provided that the finished articles used in contact with fatty food types III, IV-A, V, VII-A, and IX hold a minimum of 5 gallons (18.9 liters) of food.</li> </ol> <p style="text-align: center;">* * * * *</p>

Dated: April 27, 2000

**L. Robert Lake,**

*Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00-11479 Filed 5-8-00; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 522

#### Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone and Estradiol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA)

filed by Ivy Laboratories, Div. of Ivy Animal Health, Inc. The supplemental ANADA provides for subcutaneous use of a cattle ear implant containing trenbolone and estradiol for pasture cattle for increased rate of weight gain. Technical changes are also made.

**DATES:** This rule is effective May 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jack Caldwell, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0217.

**SUPPLEMENTARY INFORMATION:** Ivy Laboratories, Div. of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed supplemental ANADA 200-221 for use of Component® TE-G (40 milligrams (mg) trenbolone acetate and 8 mg estradiol, in 2 pellets, each pellet containing 20 mg of trenbolone acetate and 4 mg of estradiol) for increased rate of weight gain in pasture cattle (slaughter, stocker, and feeder steers and heifers). The supplemental ANADA is

approved as of March 6, 2000, and the regulations in 21 CFR 522.2477 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because

it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.2477 is amended by revising paragraphs (b), (d)(1)(i)(A), (d)(1)(i)(B), (d)(1)(i)(C), (d)(1)(ii), (d)(2)(i), (d)(2)(ii), and (d)(3)(i) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

\* \* \* \* \*

(b) Sponsors. See No. 012799 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i)(A), (d)(1)(i)(C), (d)(1)(ii), (d)(1)(iii), (d)(2), and (d)(3) of this section. See No. 021641 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i)(A), (d)(1)(i)(B), (d)(1)(ii), (d)(1)(iii), and (d)(3) of this section.

\* \* \* \* \*

- (d) \* \* \*
(1) \* \* \*
(i) \* \* \*

(A) 120 milligrams (mg) trenbolone acetate and 24 mg estradiol (one implant consisting of 6 pellets, each pellet containing 20 mg trenbolone acetate and 4 mg estradiol) per implant dose.

(B) 120 mg trenbolone acetate and 24 mg estradiol (one implant consisting of 7 pellets, each of 6 pellets containing 20 mg trenbolone acetate and 4 mg estradiol, and 1 pellet containing 29 mg tylosin tartrate) per implant dose.

(C) 200 mg trenbolone acetate and 20 mg estradiol (one implant consisting of 10 pellets, each pellet containing 20 mg trenbolone acetate and 2 mg estradiol) per implant dose.

(ii) Indications for use. For increased rate of weight gain and improved feed efficiency.

\* \* \* \* \*

(2) Heifers fed in confinement for slaughter—(i) Amount. 140 mg trenbolone acetate and 14 mg estradiol (one implant consisting of 7 pellets, each pellet containing 20 mg trenbolone

acetate and 2 mg estradiol) per implant dose.

(ii) Indications for use. For increased rate of weight gain and improved feed efficiency.

\* \* \* \* \*

(3) \* \* \* (i) Amount. 40 mg trenbolone acetate and 8 mg estradiol (one implant consisting of 2 pellets, each pellet containing 20 mg trenbolone acetate and 4 mg estradiol) per implant dose.

\* \* \* \* \*

Dated: April 25, 2000.

Claire M. Lathers,

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

[FR Doc. 00-11477 Filed 5-8-00; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 727

RIN 0703-AA59

Legal Assistance

AGENCY: Department of the Navy, DOD. ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its regulations concerning the provision of legal assistance to military members and other persons eligible for legal assistance to reflect recent changes to Chapter VII of the Manual of the Judge Advocate General.

DATES: Effective May 9, 2000.

ADDRESSES: Office of the Judge Advocate General (Code 36), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Steven L. Haycock, Judge Advocate General's Corps, U.S. Navy, Office of the Judge Advocate General (Code 36), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066, Telephone number (202) 685-4642.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 727, which is derived from Chapter VII of the Manual of the Judge Advocate General, to reflect changes to that regulation. The amendment relates to internal naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been

determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR parts 296 and 701. It has also been determined that this rule is not a "significant regulatory action" as defined in Executive Order 12866.

List of Subjects in 32 CFR Part 727

Legal services, Military law, Military personnel.

Accordingly, 32 CFR part 727 is amended as follows:

PART 727—LEGAL ASSISTANCE

1. The authority citation for part 727 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

2. Revise § 727.5 to read as follows:

§ 727.5 Persons eligible for assistance.

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. Legal assistance is intended primarily for the benefit of active duty personnel during active service, including reservists (and members of the National Guard) on active duty for 30 days or more. As resources permit, legal assistance may be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, reservists on active duty for single periods of 29 days or less, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible, and other persons authorized by the Judge Advocate General of the Navy.

3. Amend § 727.6 by revising paragraphs (a) introductory text, (a)(2), (a)(6), and (d) to read as follows:

§ 727.6 Functions of legal assistance officers.

(a) Basic duties. A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him/her:

\* \* \* \* \*

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may

prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings, as are appropriate.

\* \* \* \* \*

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and pertinent Navy instructions.

\* \* \* \* \*

(d) *Professional legal advice.* Legal assistance is authorized for personal legal affairs only, as contrasted with military justice problems, business ventures, or matters that are not of a personal nature. Legal assistance duties are separate and apart from responsibilities of trial counsel, defense counsel, or others involved in processing courts-martial, nonjudicial punishments, administrative boards or proceedings, and investigations. Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under the Code of Professional Responsibility of the American Bar Association.

4. Amend § 727.7 by revising paragraphs (a), (b), (d) and (e) to read as follows:

(a) *Assistance in official military matters.* Legal Assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a service member accused or suspected of an offense or conduct leading to an administrative proceeding will request advice from the legal assistance officer. In such a case, the service member should be advised of the proper procedures for obtaining

counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for respondent, or counsel for a party.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may provide advice concerning the legal and practical implications of divorce, legal separation, annulment, custody, and paternity. Assistance and advice in domestic violence cases will be consistent with the Department of the Navy family advocacy program. If two or more eligible persons with conflicting interests seek legal assistance from the same office on the same matter, the party first establishing an attorney-client relationship will be provided representation. Other parties shall be advised that they are also eligible for assistance, but that it must be obtained from another source, with the assistance of and referral by the first office.

\* \* \* \* \*

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the United States without the specific approval of the Judge Advocate General.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone. This does not prohibit appropriate follow-up telephone discussions between the legal assistance attorney and the client.

5. Amend § 727.8 by revising the first sentence to read as follows:

**§ 727.8 Confidential and privileged character of service provided.**

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. \* \* \*

6. Amend § 727.10 by revising paragraphs (a) and (c) to read as follows:

**§ 727.10 Fees, compensation, solicitation, and representation in civilian courts.**

(a) *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part whether or not the service rendered is normally provided or available to such person under this part and

whether or not the service is rendered during duty hours as part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part with respect to matters about which they consulted or advised said person in an official capacity.

\* \* \* \* \*

(c) *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in paragraph (a)(3) of § 727.6, or the Expanded Legal Assistance Program, or under guidelines prescribed in the Manual of the Judge Advocate General, before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, the administrator of the applicable program, or the Commander, Naval Legal Service Command, as appropriate. Requests for such permission may be in the form prescribed in the Manual of the Judge Advocate General.

7. Amend § 727.12 by revising paragraph (b) to read as follows:

**§ 727.12 Communications.**

\* \* \* \* \*

(b) The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in Department of Defense Instructions. Naval Legal Service Offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply United States Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in § 727.8.

Dated: April 27, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00-11505 Filed 5-8-00; 8:45 am]

**BILLING CODE 3810-FF-P**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 165**

[COTP Western Alaska 00-001]

RIN 2115-AA97

**Safety Zone; Kachemak Bay, Alaska; Correction****AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule; correction of effective dates.

**SUMMARY:** This document corrects the effective dates of temporary final rule (COTP Western Alaska 00-001) which published April 28, 2000. The temporary final rule establishes a temporary 200-yard radius safety zone around the M/V SWAN to ensure the safe and timely anchoring, loading, and departure of vessels and a barge operating in Kachemak Bay.

**DATES:** As of May 4, 2000, the effective dates of the temporary rule published at 65 FR 24874 are corrected to 12:01 a.m. on May 11, 2000 until 11:59 p.m. on May 13, 2000. The correction to § 165.T17-00-001 is effective from May 11, 2000 until May 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271-6724.

**SUPPLEMENTARY INFORMATION:****Background**

On April 28, 2000, the Coast Guard published a temporary final rule entitled Safety Zone; Kachemak Bay, Alaska, in the **Federal Register** (65 FR 24874) to be effective from 12:01 a.m. on May 4, 2000, until 11:59 p.m. on May 9, 2000. The Coast Guard has been notified that the estimated time of arrival of the M/V SWAN has been changed to May 10, 2000.

**Need for Modification**

As published, the effective date of the temporary final rule is now incorrect and therefore needs to be changed to reflect the new arrival time of M/V SWAN.

**Modification of Publication**

Accordingly, the publication on April 28, 2000 of the temporary final rule (COTP Western Alaska 00-001), which is the subject of FR Doc. 00-10607, is corrected as follows:

1. On page 24874, in the second column, in the **DATES** section, lines 2 and 3, correct the dates "May 4, 2000" and "May 9, 2000" to read "May

11, 2000" and "May 13, 2000" respectively.

**§ 165.T17-00-001 [Corrected]**

2. On page 24875, in the second column, in § 165.T17-00-001, paragraph (b), lines 2 and 3, correct the dates "May 4, 2000" and "May 9, 2000" to read "May 11, 2000" and "May 13, 2000" respectively.

Dated: May 2, 2000.

**R. Rodriguez,***LCDR, U.S. Coast Guard, COTP, Western Alaska, Acting.*

[FR Doc. 00-11554 Filed 5-4-00; 3:15 pm]

**BILLING CODE 4910-15-P****POSTAL SERVICE****39 CFR Part 111****Barcode Requirements for Special Services Labels****AGENCY:** Postal Service.**ACTION:** Extension of compliance date for commercially printed special services labels.

**SUMMARY:** In response to information received by the Postal Service from the mailing community, the Postal Service is extending the compliance date for barcoded special services labels from June 10, 2000, to February 3, 2001.

**DATES:** Effective May 9, 2000. All parties must comply with the final rules (published on January 24, 2000, at 65 FR 3609) for barcoding of special services labels and forms by February 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Tandelyia Samuels, (202) 268-5236.

**SUPPLEMENTARY INFORMATION:** On January 24, 2000, the Postal Service made a public announcement in the **Federal Register**, Volume 65, that any mailer using commercially printed special services labels on or after June 10, 2000, will be required to meet the new barcoded special services label requirements. In response to information received by the Postal Service from the mailing community since the January 24, 2000, announcement, the Postal Service is extending the compliance date for barcoded special services labels from June 10, 2000, to February 3, 2001. Any mail with PS Form 3800, Certified Mail Receipt, PS Form 3813P, Receipt for Insured Mail—Domestic-International, PS Form 8099, Receipt for Recorded Delivery, Label 200, Registered Mail, and PS Form 3804, Return Receipt for Merchandise, on or after February 3, 2001, will be required to meet the barcode requirements. The final rule

changes affecting the barcoding of special services labels and forms are set forth in the June 1 update to the Domestic Mail Manual (DMM) and in the International Mail Manual (IMM). The technical requirements for producing barcoded special services labels and forms are published in Publication 109, Special Services Technical Guide—Postal Forms and Labels, published March 2000. Publication 109 is available on the Postal Service Web site (<http://www.usps.com>). Click on "Get Info," then "Postal Periodicals and Publications," then "Publications," and scroll to Publication 109.

**Stanley F. Mires,***Chief Counsel, Legislative.*

[FR Doc. 00-11588 Filed 5-8-00; 8:45 am]

**BILLING CODE 7710-12-U****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 271**

[FRL-6601-3]

**Montana: Final Authorization of State Hazardous Waste Management Program Revision****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Immediate final rule.

**SUMMARY:** Montana has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements for Final authorization and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposed rule because we believe this action is not controversial. Unless we get significant written comments opposing this authorization during the comment period, the decision to authorize Montana's changes to their hazardous waste program will take effect as provided below. If we receive significant comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the State's changes.

**DATES:** This Immediate Final Rule will become effective August 7, 2000, unless we receive significant adverse or critical written comments by June 23, 2000. If

significant adverse or critical written comments are received, we will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

**ADDRESSES:** Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139. You can view and copy Montana's application at the following addresses: Air and Waste Management Bureau, Permitting and Compliance Division, Montana Department of Environmental Quality, Metcalf Building, 1520 East Sixth Ave., Helena, Montana 59620, Phone: 406/444-1430; and U.S. EPA Region VIII, Montana Office, 301 S. Park, Federal Building, Helena, MT 59626, Phone: 406/441-1130 ext 239.

**FOR FURTHER INFORMATION CONTACT:** Eric Finke, Waste and Toxics Team Leader, U.S. EPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: (406) 441-1130 ext 239, or Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139.

**SUPPLEMENTARY INFORMATION:**

**A. Why Are Revisions to State Programs Necessary?**

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**B. What Decisions Have We Made in This Rule?**

We conclude that Montana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Montana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Montana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out those portions of the RCRA program described in its revised

program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by EPA under the authority of HSWA take effect immediately and will be implemented by EPA until the State is granted authorization.

**C. What Is the Effect of Today's Authorization Decision?**

The effect of this decision is that a facility in Montana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements. Montana has primary enforcement responsibilities under its state hazardous waste program for violations of the program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections, and require monitoring, tests, analyses, or reports; and
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Montana is being authorized are already effective, and are not changed by today's action.

**D. Why Wasn't There a Proposed Rule Before Today's Rule?**

EPA did not publish a proposed rule before today's rule because we view this as a routine program change and do not expect significant written comments opposing this approval. We are providing an opportunity for public comment at this time. In addition, in the proposed rules section of today's **Federal Register**, there is a separate document that proposes to authorize the State program changes. If we receive significant written comments opposing this authorization, that document will serve as a proposal to authorize the changes.

**E. What Happens if EPA Receives Written Comments Opposing This Action?**

If we receive significant written comments opposing this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. We then will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to

comment on this action, you must do so at this time.

If we receive significant written comments opposing authorization of only a particular change to the State hazardous waste program, we will withdraw that part of the rule. However, the authorization of program changes that are not opposed by any comments will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

**F. What Has Montana Previously Been Authorized For?**

Montana initially received Final authorization on July 11, 1984, effective July 25, 1984 (49 FR 28245) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 11, 1984, effective September 25, 1985 (49 FR 28245), and January 19 1994, effective March 21, 1994 (59 FR 02752).

**G. Notice of Change in the Numbering System for the Administrative Rules of Montana (ARM).**

The Administrative Rules of Montana (ARM) were renumbered on October 30, 1995. The Montana hazardous waste rules that were previously found at ARM 16.44 are now found at ARM 17.54. All chapter and paragraph numbering remain the same (i.e., the old 16.44.101 is now 17.54.101) except as noted below:

Old	New
16.44.103 .....	17.54.105
16.44.104 .....	17.54.106
16.44.105 .....	17.54.107
16.44.106 .....	17.54.108
16.44.107 .....	17.54.109
16.44.108 .....	17.54.110
16.44.109 .....	17.54.111
16.44.110 .....	17.54.112
16.44.111 .....	17.54.113
16.44.112 .....	17.54.118
16.44.113 .....	17.54.119
16.44.114 .....	17.54.120
16.44.115 .....	17.54.125
16.44.116 .....	17.54.126
16.44.117 .....	17.54.127
16.44.118 .....	17.54.128
16.44.119 .....	17.54.130
16.44.120 .....	17.54.131
16.44.121 .....	17.54.132
16.44.122 .....	17.54.133
16.44.123 .....	17.54.136
16.44.124 .....	17.54.137
16.44.125 .....	17.54.138
16.44.126 .....	17.54.140
16.44.127 .....	17.54.145
16.44.128 .....	17.54.146
16.44.129 .....	17.54.150
16.44.130 .....	17.54.155

Old	New	Old	New	Old	New
16.44.202	17.54.201	16.44.814	17.54.820	16.44.413	17.54.418
16.44.304	17.54.307	16.44.815	17.54.821	16.44.415	17.54.421
16.44.305	17.54.308	16.44.816	17.54.822	16.44.1108	17.54.1112
16.44.306	17.54.309	16.44.817	17.54.823	16.44.1109	17.54.1113
16.44.307	17.54.310	16.44.818	17.54.824	16.44.1110	17.54.1114
16.44.308	17.54.312	16.44.819	17.54.825	16.44.1111	17.54.1118
16.44.310	17.54.315	16.44.820	17.54.830	16.44.1112	17.54.1119
16.44.311	17.54.316	16.44.821	17.54.831		
16.44.405	17.54.408	16.44.822	17.54.832		
16.44.406	17.54.409	16.44.823	17.54.833		
16.44.407	17.54.410	16.44.904	17.54.905		
16.44.416	17.54.425	16.44.905	17.54.907		
16.44.417	17.54.426	16.44.906	17.54.908		
16.44.418	17.54.427	16.44.907	17.54.909		
16.44.425	17.54.435	16.44.908	17.54.910		
16.44.430	17.54.440	16.44.909	17.54.911		
16.44.703	17.54.705	16.44.910	17.54.912		
16.44.804	17.54.807	16.44.911	17.54.915		
16.44.805	17.54.808	16.44.1103	17.54.1105		
16.44.806	17.54.809	16.44.1104	17.54.1106		
16.44.807	17.54.810	16.44.1105	17.54.1107		
16.44.808	17.54.811	16.44.1106	17.54.1108		
16.44.809	17.54.812	16.44.1107	17.54.1109		
16.44.810	17.54.813	16.44.408	17.54.411		
16.44.811	17.54.814	16.44.410	17.54.415		
16.44.812	17.54.817	16.44.411	17.54.416		
16.44.813	17.54.818	16.44.412	17.54.417		

**H. What Changes Are We Authorizing With Today's Action?**

In February 1995, Montana submitted a final revision application, seeking authorization of program changes in accordance with 40 CFR 271.21.

We now make an immediate final decision, subject to receipt of significant written comments opposing this action, that Montana's hazardous waste program revision satisfies all of the requirements necessary for Final authorization. Therefore, we grant Montana Final authorization for the following program changes:

Description of federal requirement	Analogous state authority <sup>1</sup> and effective date
Dioxin Waste Listing and Management Standards; 50 FR 01978, 01/14/85. (Checklist 14).	ARM 17.54.131, .310, .330, .331, .333, .351, .352, .401, .603, .609, .702.
Paint Filter Test; 50 FR 18370, 04/30/85. (Checklist 16)	ARM 17.54.609, .702.
Sharing of Information with the Agency for Toxic Substances and Disease Registry; HSWA 3019(b), 07/15/85. (Non-checklist SI).	ARM 17.54.1008; & MCA 2-6-102.
HSWA Codification Rule; 50 FR 28701, 07/15/85. (Checklist 17)	ARM 17.54.106, .107, .108, .111, .113, .126, .131, .132, .140, .303, .307, .309, .402, .408, .409, .426, .605, .609, .702; & MCA 75-10-406.
Listing of TDI, TDA, and DNT; 50 FR 42936, 10/23/85. (Checklist 18)	ARM 17.54.332, .333, .351, .352.
Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces; 50 FR 49164, 11/29/85; & 52 FR 11819, 04/13/87. (Checklist 19 & 19.1).	ARM 17.54.303, .309, .402, .609, .702.
Listing of Spent Solvents; 50 FR 53315, 12/31/85, & 51 FR 2702, 01/21/86. (Checklist 20).	ARM 17.54.331.
Listing of EDB Waste, 51 FR 5327, 02/13/86. (Checklist 21)	ARM 17.54.332, .351, .352.
Listing of Four Spent Solvents, 51 FR 6537, 02/25/86. (Checklist 22)	ARM 17.54.331, .333, .351, .352.
Codification Rule; Technical Correction (Paint Filter Test), 51 FR 19176, 05/28/96. (Checklist 25).	ARM 17.54.609.
Exports of Hazardous Waste, 51 FR 28664, 08/08/86. (Checklist 31)	ARM 17.54.201, .309, .402, .408, .426, .435, .440, .505.
Standards for Generators; Waste Minimization Certifications, 51 FR 35190, 10/01/86. (Checklist 32).	ARM 17.54.408.
Listing of EBDC, 51 FR 37725, 10/24/86. (Checklist 33)	ARM 17.54.332, .351, .352.
Farmer Exemptions; Technical Corrections, 53 FR 27164, 07/19/88. (Checklist 48).	ARM 17.54.105, .150, .401, .612.
Exports of Hazardous Waste; Technical Corrections, 56 FR 43704, 09/04/91. (Checklist 97).	ARM 17.54.435.
Land Disposal Restrictions; 51 FR 40572, 11/07/86, & 52 FR 21010, 06/04/87. (Checklist 34).	ARM 17.54.101, .112, .128, .131, .150, .201, .301, .307, .308, .309, .310, .320, .330, .401, .402, .504, .601, .609, .701, .702, .1008.
California List Waste Restrictions; 52 FR 25760, 07/08/87, & 52 FR 41295, 11/27/87. (Checklist 39).	ARM 17.54.102, .128, .150, .440, .609, .610, .702.
Land Disposal Restrictions for First Third Scheduled Wastes; 53 FR 31138, 08/17/88, & 54 FR 8264, 02/27/89. (Checklist 50).	ARM 17.54.150, .309, .609, .702.
Land Disposal Restriction Amendments to First Third Scheduled Wastes, 54 FR 18836, 05/02/89. (Checklist 62).	ARM 17.54.150.
Land Disposal Restrictions for Second Third Scheduled Wastes, 54 FR 26594, 06/23/89. (Checklist 63).	ARM 17.54.150.
Land Disposal Restrictions; Corrections to First Third Scheduled Wastes, 54 FR 36967, 09/06/89, & 55 FR 23935, 06/13/90. (Checklist 66).	ARM 17.54.150.
Land Disposal Restrictions for Third Third Scheduled Wastes, 55 FR 22520, 06/01/90. (Checklist 78).	ARM 17.54.128, .150, .320, .321, .322, .323, .324, .331, .333, .352, .402, .421, .601, .609, .702.
Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment, 56 FR 3864, 01/31/91. (Checklist 83).	ARM 17.54.128, .150, .303, .320, .331, .402, .421.

Description of federal requirement	Analogous state authority <sup>1</sup> and effective date
Standards for Generators of Hazardous Waste, 53 FR 45089, 11/08/88. (Checklist 58).	ARM 17.54.408.

<sup>1</sup> Administrative Rules of Montana (ARM), revised September 30, 1995, and the Montana Code Annotated (MCA).

### I. Where Are the Revised State Rules Different From the Federal Rules?

The following State requirements are considered to be more stringent than the Federal requirements: ARM 17.54.113(4) and 17.54.126(2) as they relate to Boiler and Industrial Furnaces only and ARM 17.54.435(6) regarding Annual Reporting requirements. Nevertheless, these requirements are part of Montana's authorized program and are Federally enforceable.

States cannot assume the authority at 40 CFR 262.53 regarding the "Notifications of Intent to Export" and "Acknowledgments of Consent." EPA will continue to implement these requirements. As indicated in the above paragraph, Montana is more stringent because it requires reporting to the State (ARM 17.54.435(6)), as well as, the EPA.

### J. Who Handles Permits After This Authorization Takes Effect?

Montana will issue and administer permits for all the provisions for which it is authorized. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. EPA will transfer any pending permit applications, completed permits, or pertinent file information to Montana within 30 days after the effective date of this approval. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA and Montana have agreed to joint permitting and enforcement for those HSWA requirements for which Montana is not yet authorized.

### K. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Montana?

Montana is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. Lands within the exterior boundaries of the following Indian Reservations located within the State of Montana:
  - a. Blackfeet Indian Reservation
  - b. Crow Tribe of Montana Indian Reservation
  - c. Flathead Indian Reservation
  - d. Fort Belknap Indian Reservation
  - e. Fort Peck Indian Reservation

f. Northern Cheyenne Indian Reservation

g. Rocky Boy's Indian Reservation

2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect in Indian country where EPA will continue to implement and administer the RCRA program in these lands.

The State's application did not seek to demonstrate authority over Indian country in Montana. Before EPA could approve the State's program for any portion of Indian country, we must be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

### L. What Is Codification and Is EPA Codifying Montana's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's authorized hazardous waste program statutes and regulations into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart BB for this authorization of Montana's program changes until a later date.

### M. Regulatory Analysis and Notices

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to

identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the

existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

*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. The 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 today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of 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 authorization does not have federalism implications. It 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, because this rule affects only one State. This action simply approves the State's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal

and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

*Compliance With Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a state program.

*Compliance With 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, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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."

This rule is not subject to Executive Order 13084 because it does not

significantly or uniquely affects the communities of Indian tribal governments. The State is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

#### *National Technology Transfer and Advancement Act*

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*  
[FR Doc. 00-11420 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-U**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 271**

[FRL-6601-4]

### **South Dakota: Final Authorization of State Hazardous Waste Management Program Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting final authorization to the hazardous waste program revisions submitted by South Dakota. The Agency published a proposed rule on August 10, 1999 at 64 FR 43331 and provided for public comment. The public comment period ended on September 9, 1999. No comments were received regarding Resource Conservation and Recovery Act (RCRA) program issues and no further opportunity for comment will be provided.

**DATES:** This authorization will be effective on June 8, 2000.

**ADDRESSES:** You can view and copy South Dakota's applications at the following addresses:

SDDENR, from 9 AM to 5 PM, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501-3181. Contact: Carrie Jacobson, phone number (605) 773-3153; and

EPA Region VIII, from 8 AM to 4 PM, 999 18th Street, Suite 500, Denver, CO 80202-2466. Contact: Kris Shurr, phone number: (303) 312-6139.

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466, phone number: (303) 312-6139.

**SUPPLEMENTARY INFORMATION:** On August 1, 1997, September 3, 1997, and March 23, 1999, South Dakota submitted final complete program revision applications seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision that South Dakota's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. For a list of rules that become effective with this final rule, please see the proposed rule published in the August 10, 1999 **Federal Register** at 64 FR 43331.

#### **How This Action Affects Indian Country in South Dakota**

South Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior

boundaries of the following Indian Reservations located within the State of South Dakota:

- a. Cheyenne River Indian Reservation.
- b. Crow Creek Indian Reservation.
- c. Flandreau Indian Reservation.
- d. Lower Brule Indian Reservation.
- e. Pine Ridge Indian Reservation.
- f. Rosebud Indian Reservation.
- g. Standing Rock Indian Reservation.
- h. Yankton Indian Reservation

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to comments and more specifically identify Indian country areas in the State of South Dakota.

#### **Regulatory Analysis and Notices**

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3)

a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

*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. The 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 today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of 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 authorization does not have federalism implications. It 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, because this rule affects only one State. This action simply approves the State's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

*Compliance With Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive

Order 13045 because it authorizes a state program.

#### *Compliance With 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, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. The State is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

#### *National Technology Transfer and Advancement Act*

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary

consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00-11421 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-U**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 79**

[MM Docket No. 95-176; FCC 00-136]

#### **Implementation of Section 305 of the Telecommunications Act of 1996, Closed Captioning and Video Description of Video Programming: Accessibility of Emergency Programming**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts regulations requiring emergency information that is provided to viewers be made accessible to persons with hearing disabilities. This action is necessary in order to comply with section 305 of the Telecommunications Act of 1996. This action is intended to further the protection of life, health, safety, and property, of persons with hearing disabilities.

**DATES:** The rule in this document contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will

publish a document in the **Federal Register** announcing the effective date of this rule. Written comments by the public on the new information collection are due July 10, 2000.

**ADDRESSES:** In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Marcia Glauber (202) 418-7200, TTY (202) 418-7172, or via Internet at [mglauber@fcc.gov](mailto:mglauber@fcc.gov). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at (202) 418-0214, or via the Internet at [jboley@fcc.gov](mailto:jboley@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order*, FCC 00-136, adopted April 13, 2000; released April 14, 2000. The full text of the Commission's *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at <http://www.fcc.gov/csb/> or <http://www.fcc.gov/cib/dro>.

The *Second Report and Order* contains a new information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection contained in this proceeding.

#### **Paperwork Reduction Act**

The *Second Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Second Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due July 10, 2000. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of

the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Control Number:* 3060-XXXX.

*Title:* Accessibility of Programming Providing Emergency Information—Section 79.2.

*Form No.:* Not Applicable.

*Type of Review:* New collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

*Number of Respondents:* 100 viewers and 100 video program distributors = 200 Total Respondents.

*Estimated Time per Response:* 1 and 2 hours, respectively.

*Total Annual Burden:* 300 hours.

*Cost to Respondents:* \$ 16,200.

*Needs and Uses:* The information will be used by the Commission to enforce new § 79.2. Viewers may file complaints alleging violation of this rule with the Commission. The Commission will notify video programming distributors of the complaint, and the distributor will provide the Commission with a response to the complaint.

## Synopsis of the Second Report and Order

1. The *Second Report and Order* ("Order") adopts a rule requiring that emergency information that is provided to viewers be made accessible to persons with hearing disabilities throughout the transition period established as part of the closed captioning rules. See 47 CFR 79.1. Such information may be made accessible either through closed captioning or by using a method of visual presentation. Emergency information is information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. In determining which particular details about the emergency need to be made accessible, programmers may rely on their own good faith judgments.

2. *Definition of emergency information.* We find that it is appropriate to define emergency information as information, about a current emergency, provided to viewers that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency

and how to respond to the emergency. Examples of the types of emergencies covered could include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather. These examples are intended to provide guidance as to what is covered by the rule and are not intended to be an exhaustive list.

3. Our definition of emergency information will include the provision of critical details in an accessible manner. Critical details could include, among other things, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance. In determining whether particular details need to be made accessible, we will permit programmers to rely on their own good faith judgments. Under this rule, distributors are not required to provide in an accessible format all of the information about an emergency situation that they are providing to viewers aurally, only the aural information intended to further the protection of life, health, safety, and property.

4. *Accessibility of Emergency Information.* The rule we are adopting requires that emergency information that is provided in the audio portion of the programming must be accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls. These rules apply regardless of whether the provision of information regarding an emergency occurs during a regularly scheduled newscast, an unscheduled break-in during regular programming, as part of continuing coverage of a situation, or in any other fashion. We will adopt the suggestion of some commenters that we restrict the application of the rule to the provision of emergency information that is primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

5. As was noted in the June 1999 Fact Sheet on Closed Captioning, the Commission has received numerous reports of the loss of captioning during

otherwise captioned programs. The requirement that video distributors "pass through" to viewers all captions they receive is intended to ensure that captioned programs are distributed with captions from beginning to end without exception. The Fact Sheet reminded video distributors that when providing other information, such as school closings or weather warnings, readable captions should continue to be provided. We endorse this interpretation and amend our rules to require that emergency information provided by means other than closed captioning should not block any closed captioning, and vice versa.

6. *Exemptions.* Because we are not mandating the use of closed captioning as the sole means for making emergency information accessible, we find that exemptions to this rule are unnecessary. Consistent with this conclusion, with respect to entities that are exempt from any aspect of the closed captioning rules, we find that such exemption does not extend to the obligation to provide accessible emergency information. Expenses for complying with this rule shall not be counted when making calculations of expenditures under 47 CFR 79.1(d)(11). All entities, therefore, must comply with the rule adopted in this Order.

7. *Responsibility for and determination of compliance.* As with the closed captioning rules, video programming distributors will be responsible for compliance with the rule and video programming distributors will not be responsible for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed by multichannel video programming distributors. A local broadcast station licensee, as the video programming distributor, will be responsible for its compliance with the rule regardless of the delivery technology used to deliver its signals to consumers (e.g., cable, direct broadcast satellite service). We note that many local or regional nonbroadcast networks are owned by the multichannel video programming distributors. Where the network is not owned by the multichannel video programming distributor, as we noted in the closed captioning rules, we expect that distributors will incorporate the requirement into their contracts with producers and owners, and that parties will negotiate for an efficient allocation of responsibilities.

8. Those entities that are permitted to count captions created using the electronic newsroom technique still must comply with this rule. Where they

cannot provide the required emergency information using this technique, they must use another method of visual presentation to ensure the same accessibility for persons with hearing disabilities as for any other viewer, as required by the rule.

9. In the *Order on Reconsideration* in this proceeding, 63 FR 55959 (October 20, 1998), we limited those entities for which the electronic newsroom technique may count towards compliance with the closed captioning rules. We stated that, as we move through the transition period, we will continue to review and expand the class of providers that cannot count the electronic newsroom technique towards compliance with the closed captioning rules, and that we expect that the ability to use the electronic newsroom technique will by far be the exception rather than the general rule, and that only those entities that are so small or who present unusual circumstances will be permitted to continue to use the electronic newsroom technique because live closed captioning would be an economic burden. To the extent we continue to permit entities to use the electronic newsroom technique, we will determine whether these entities will be permitted to continue to use means other than closed captioning for emergency information in the context of reviewing and expanding the limitation on the use of the electronic newsroom technique.

10. In recognition of this problem and viewers' frustration when captions are lost during a program, the current rules require video program distributors to transmit the original closed captions of a captioned program to viewers intact unless the program is edited and the captions would have to be reformatted. Video distributors also are responsible for making sure that their equipment is working properly to ensure the accurate transmission of the closed captions. Any loss of captions prior to the end of a program or scrambling of captions would be a violation of this rule.

11. *Enforcement.* Complaints may be filed with the Commission and viewers do not have to wait until after the end of the current calendar quarter before filing, or receiving a response to, their complaints. A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video

programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

12. *Effective Date.* The rule will be effective upon OMB approval.

#### Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). An initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Further Notice of Proposed Rulemaking* ("FNPRM") in this proceeding. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, MM Docket No. 95-176, Further Notice of Proposed Rulemaking, 63 FR 3070 (January 21, 1998). The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

#### A. Need for, and Objectives of, This Second Report and Order

14. Section 713 of the Communications Act, which was added by the Telecommunications Act of 1996, required the Commission to make new video programming fully accessible to persons with hearing disabilities. 47 U.S.C. 613. In the course of adopting rules to implement this section of the Act, the Commission noted its concern that viewers with hearing disabilities may not always have access to the same emergency information as is currently available to other viewers and decided to further examine ways to make this programming accessible. *See Report and Order*, 62 FR 48487 (September 16, 1997). This *Second Report and Order* adopts rules to ensure that emergency information is available to persons with hearing disabilities either through closed captioning or by using a method of visual presentation.

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

15. Telecommunications for the Deaf, Inc. ("TDI") filed the only comment on the IRFA in the context of its general comments. It proposes that all video programming providers be required to contribute to a Commission administered fund based on their gross revenues. This fund would be used for rebates to small entities (*e.g.*, low power television stations, small cable operators) for the costs incurred when providing captioned emergency information. We decline to adopt this proposal since our rule does not require the closed captioning of emergency information. The rule imposes modest obligations on video programming distributors and provides each entity sufficient flexibility to determine the most feasible and affordable method for making emergency information accessible to persons with hearing disabilities.

16. TDI also states that we should not adopt a reporting requirement, except where a specified number of complaints have been logged for non-compliance, because a reporting requirement would impose an undue burden. TDI Comments at 4. The Commission decided that no reporting requirement was necessary to implement the rule, but rather to rely on a complaint process to ensure compliance. Therefore, we will not adopt TDI's suggestion to minimize reporting requirements.

#### C. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

17. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules. 5 U.S.C. 603(b)(3). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act" unless the Commission has developed one or more definitions that are appropriate for its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). 15 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of

a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." Below we address the video programming distributors (i.e., multichannel video programming distributors ("MVPDs") and broadcast stations) subject to the rule adopted in this Order and provide estimates of the affected small entities.

18. *Small MVPDs*. The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of \$11 million or less. 13 CFR 121.201. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992. The following provides a more precise estimate for each MVPD service individually.

19. *Cable Services or Systems*. The Commission has developed, with SBA's approval, its own definition of a "small cable company" and "small system" for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable company is one with annual revenues of \$100 million or less. Based on our most recent information, we estimate that there were 1,439 cable companies that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable companies. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the proposal adopted in this *Second Report and Order*. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. 47 CFR 76.901(c). We do

not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

20. The Communications Act also contains a definition of a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." 47 U.S.C. 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate. 47 CFR 76.1403(b). Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

21. *Multichannel Multipoint Distribution Service ("MMDS")*. In its IFRA in this proceeding, the Commission included an analysis of local multipoint distribution systems ("LMDS"). At that time, there was one video programming distributor using LMDS frequencies to provide video services. Since the FNPRM, that distributor ceased operation and it appears that LMDS licensees will use these frequencies for services other than video distribution. MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than \$40 million for the preceding three calendar years. 47 CFR 21.961(b)(1).

This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March

1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

22. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of \$11 million annually. Therefore, for purposes of the FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

23. The SBA definition of small entities for pay television services, which includes such companies generating \$11 million in annual receipts, appears applicable to ITFS. 13 CFR 121.201. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. 601(5). However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

24. *Satellite Master Antenna Television ("SMATV") Systems*. The SBA definition of small entities for cable and other pay television services specifically includes SMATV services and, thus, small entities are defined as all such companies generating \$11 million or less in annual receipts. 13 CFR 121.201. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that

these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

25. *Direct Broadcast Satellite ("DBS") Service.* The SBA includes DBS service in its classification of cable and other pay television services. Therefore, a small DBS service is defined as a company generating \$11 million or less in annual receipts. 13 CFR 121.201. As of November 1999, there were four DBS licensees, one of which was not in operation. Providing DBS service requires a great investment of capital to build, launch, and operate satellite systems. Typically, small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with launching satellites. Most recent industry statistics suggest that the revenue attributed to DBS subscribers for EchoStar was \$682.8 million for the year of 1998 and \$1.55 billion for DirecTV. We do not have similar revenue information for the third operating licensee, Dominion Video Satellite, Inc. However, we do not believe that any DBS licensees could be categorized as a small business.

26. *Home Satellite Dish ("HSD") Service.* The market for HSD service is difficult to quantify. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 channels are unscrambled. To receive scrambled channels, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, those HSD users that subscribe to a programming package are similar to consumers that subscribe to cable and other pay television services. Accordingly, it appears that the definition of small entity under SIC 4841 (i.e., all such companies generating \$11 million or less in annual receipts), 13 CFR 121.201, would be applicable to this service.

27. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers. As of June 1999, these program packagers provide subscriptions to approximately 1,783,411 subscribers nationwide. This is an average of about 90,000 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

28. *Open Video System ("OVS") Service.* As part of the Telecommunications Act of 1996, Congress established the OVS framework for the delivery of multichannel video programming service. 47 U.S.C. 571. This new service is similar to cable television and other pay television services. Although OVS is not specifically enumerated under SIC 4841, it is appropriate to include OVS in this classification and to apply the SBA definition of small entity, which includes all such companies generating \$11 million or less in annual receipts, to OVS service. 13 CFR 121.201. The Commission has issued 37 certifications to operate OVS systems. Of these 37 certifications, MFS has withdrawn its two certifications for New York City and Boston because it does not intend to operate open video systems in these areas and Bell Atlantic shut down its Dover, New Jersey, system in favor of its distribution agreement with DirecTV. Of these 37 certifications, only one OVS operator, RCN, is providing service in various service areas across the United States. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

29. *Small Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with \$10.5 million or less in annual receipts. 13 CFR 121.201, SIC 4833. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are

commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.

30. There were 1,509 full-service television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating full-service television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than \$10 million in revenue was 1,155 establishments. The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information. Thus, the rule will affect approximately 1,616 television stations; approximately 77%, or 1,244, of those stations are considered small businesses. We use the 77% figure of television stations operating at less than \$10 million for 1992 and apply it to the 1999 total of 1,616 television stations to arrive at stations categorized as small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

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

31. This *Second Report and Order* does not adopt any required reporting or recordkeeping. However, when a video programming distributor is notified by the Commission that a complaint alleging violation of the rule has been received, the distributor may submit records, certifications, or other documentation that demonstrate compliance with the rule.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

32. In the FNPRM, the Commission sought information and comment regarding the appropriate rules and policies to promote and ensure the accessibility of emergency information to persons with hearing disabilities. We requested comment on whether separate transitional closed captioning requirements are needed for emergency information or whether there are other methods of providing accessibility for this type of programming.

33. In this *Second Report and Order*, the Commission defines emergency information and adopts a requirement that video programming distributors must make emergency information accessible to persons with hearing disabilities either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls. We concluded that a rule requiring closed captioning or a method of visual presentations achieves the goal of ensuring that the same critical information about an emergency is accessible to persons with hearing disabilities as is available to other viewers. The rule also provides significant flexibility to the video programming distributor by allowing it to determine the most feasible and affordable method for making such information accessible. Therefore, the rule will not impose an economic burden on video programming distributors, including small entities.

#### F. Report to Congress

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

#### Ordering Clauses

35. Pursuant to the authority contained in sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the Commission's rules are amended by adding a new § 79.2 as shown in the rule changes. The amendments set forth in the rule changes shall become effective upon approval from the Office of Management and Budget.

36. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 79

Closed captioning of video programming.

Federal Communications Commission.

**Magalie Roman Salas**,  
Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

#### PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

1. The authority citation for Part 79 continues to read as follows:

**Authority:** 47 U.S.C. 613.

2. Add § 79.2 to read as follows:

##### § 79.2 Accessibility of programming providing emergency information.

(a) *Definitions.* (1) For purposes of this section, the definitions in § 79.1 apply.

(2) *Emergency information.* Information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.

**Note to paragraph (a)(2):** Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

(b) *Requirements for accessibility of programming providing emergency information.* (1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation.

(2) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(3) Emergency information provided by means other than closed captioning should not block any closed captioning

and any closed captioning provided should not block any emergency information provided by means other than closed captioning.

(c) *Complaint procedures.* A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

[FR Doc. 00-11483 Filed 5-8-00; 8:45 am]

BILLING CODE 6712-01-P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AE43

### Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status for the Koala

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines threatened status for the Australian koala under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) as amended. The eucalyptus forest and woodland ecosystems on which this arboreal marsupial depends have been greatly reduced. Despite several conservation actions by the Government of Australia and State governments, the limited koala habitat continues to deteriorate. The species also is threatened by fragmentation of the habitat that remains, disease, loss of genetic variation, and death by dogs and motor vehicles due to development. Although differences occur in the health status of local populations, we are not able to designate either the current subspecies or the koalas of particular States as distinct vertebrate population segments. Koalas are no longer exploited for their fur, and it is habitat loss and its secondary effects that now threaten the species. This rule extends the

Endangered Species Act's protection to koalas throughout Australia.

**DATES:** Effective June 8, 2000.

**ADDRESSES:** Please send correspondence concerning this rule to Chief, Office of Scientific Authority, ARLSQ 750; U.S. Fish and Wildlife Service; Washington, DC 20240; fax number 703-358-2276. Express and messenger deliveries should be addressed to Chief, Office of Scientific Authority, Room 750; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:**

Susan Lieberman, Chief, Office of Scientific Authority, phone 703-358-1708, fax 703-358-2276, E-mail: r9osa@fws.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

The koala (*Phascolarctos cinereus*) is an arboreal mammal found only in Australia. It has a compact body, large head and nose, large and furry ears, powerful limbs, and no significant tail. Mature koalas weigh from 4-15 kilograms (10-35 pounds), with larger animals in southern Australia. The koala is a marsupial, more closely related to kangaroos and possums than to true bears and other placental mammals. Koalas carry their young in a pouch for about 6 months. They occur in the forests and woodlands of central and eastern Queensland, eastern New South Wales, Victoria, and southeastern South Australia.

In a petition dated May 3, 1994, which we received on May 5, 1994, Australians for Animals (AFA) (in Australia) and the Fund for Animals (FFA) (in the United States) requested that the koala be classified as endangered in New South Wales and Victoria, and as threatened in Queensland. About 40 organizations in the United States and Australia were named as supporting the petition. The document included extensive data indicating that the koala has declined dramatically since European settlement of Australia began about 200 years ago and has lost more than half of its natural habitat because of human activity. Once numbering in the millions, the koala was intensively hunted for its fur up through the 1920s. It is totally dependent for food and shelter on certain types of trees within forests and woodlands. The destruction or degradation of this habitat would reduce the viability of populations, even if the animals were otherwise protected.

On October 4, 1994 (59 FR 50557), we announced a 90-day finding that the petition presented substantial information indicating that the

requested action may be warranted. That notice also initiated a status review of the koala. On February 15, 1995 (60 FR 8620), we reopened the comment period on the status review until April 1, 1995. We sent a telegram to the U.S. embassy in Australia, asking that appropriate authorities be notified and asked to comment. We also presented the review directly to numerous concerned organizations and authorities. Of the approximately 400 responses received, the great majority were brief messages in support of listing, but several responses were from persons or organizations providing substantive comments based on firsthand knowledge of the situation.

On September 22, 1998 (63 FR 50547), we proposed the koala as threatened throughout its range, and we sought public comments. We received over 3,000 responses: The vast majority were cards with a printed message endorsing the comments of the International Wildlife Coalition and supporting threatened status for the koala, but personal letters also expressed support for listing the species. We also received letters with substantive comments on the proposal from persons with direct knowledge of koala biology; many of those comments came from persons or groups who had offered opinions and information on earlier notices. We also sought information from scientists on a number of outstanding issues.

**What Were the Comments of Those Who Opposed the Proposed Listing?**

All of the Australian Federal and State authorities that commented on the proposal opposed it. They were joined by three other respondents, including two who represented zoological associations in Australia and the United States.

Dr. Colin Griffiths, Director of National Parks and Wildlife, submitted comments for Environment Australia, the agency responsible for koala policy on the national level. He stated that the Australian Government continues to object to our proposal to list the koala as a threatened species under U.S. law. Noting that, under the Endangered Species Protection Act 1992 (ESPA) no trade in koalas or koala products is permitted, Dr. Griffiths said "we have yet to see any explanation of how the listing of the koala in the United States would contribute to koala conservation." The submission also stated that the Endangered Species Scientific Subcommittee established under the ESPA has evaluated nominations of the koala both under "species that are endangered" and "species that are vulnerable." In each

instance, the subcommittee concluded that the koala did not meet the criteria for listing at a national level.

We fully understand the view of the Australian Government on the status of a species that is native only within its boundaries, particularly where only an occasional zoo acquisition leaves the country. However, our Endangered Species Act (ESA) is international in scope, and we are compelled by law to evaluate petitions of species beyond U.S. boundaries.

Dr. Griffiths made the point that the Australian Government has taken a number of steps in koala conservation since the listing proposal came to us in 1994. A scientific advisory board has reported to the Minister of Environment that the species is relatively abundant and widespread nationally and not likely to become endangered within the next 25 years. In 1998, the legislation of the Commonwealth and the States protecting koalas was integrated into the National Koala Conservation Strategy. The Strategy was developed by the Australian and New Zealand Environment and Conservation Council and was included with the comments submitted by Environment Australia.

Finally, the submission made the objection raised by several others on the listing proposal: Australians particularly object to a rule in which we classify the species as threatened throughout its range rather than assess whether the koala warrants this classification in each State. While the ESA does not allow us to differentiate vertebrate populations solely on state or provincial boundaries (whereas we can on national boundaries), it does allow us to make these distinctions when significant biological differences exist between the populations. The issue that predominates is whether the three subspecies that have been described for koalas represent distinct vertebrate population segments.

Mr. Allan Holmes, Director of National Parks and Wildlife for the Department of Environment, Heritage and Aboriginal Affairs of South Australia, also made the point that the status of the koala varies regionally, and it is not considered nationally endangered or vulnerable. Koalas in South Australia are protected under the National Parks and Wildlife Act 1972 and are listed as rare under Schedule 9. In providing a history of koala management in the State, Mr. Holmes maintained that the classification as rare is misleading as the koala population in South Australia was at the western edge of its range even prior to European settlement. By 1930, the koala was considered extinct in South Australia,

and, as a consequence, a population was established on Kangaroo Island and subsequently at other sites on the mainland. Koala habitat is patchy in South Australia, largely due to forest fragmentation caused by 150 years of agricultural development. Koalas introduced to these patches have established populations and have frequently exceeded carrying-capacity with consequent damage to food trees. The letter affirmed the commitment of the Government of South Australia to ensuring that koalas are conserved in the State and that they are managed in such a way that will sustain them and their habitat. Mr. Holmes concluded that the current situation in South Australia with local overpopulation and genetic founder effects illustrates that the threats to koalas are different across Australia and that a single classification may not best serve conservation efforts for the species.

Mr. Michael Taylor, Secretary of the Department of Natural Resources and Environment for the State of Victoria, said that the status of the species has continuously improved from the 1920s when it was probably endangered, to its current status as a widespread and common species. The koala is protected wildlife under the provisions of Victoria's Wildlife Act 1975, which protects all indigenous terrestrial vertebrates, and the Flora and Fauna Guarantee Act 1998, which seeks to insure that species not only survive but retain their evolutionary potential in the wild. Under the provisions of that law, any person or group can nominate a species for listing, and it will be assessed by an independent Scientific Advisory Committee. Victoria's submission noted that, while 359 taxa have been nominated, the koala has not been one of them. Moreover, the government of Victoria has subjected all of its native vertebrates to the World Conservation Union criteria (IUCN, 1994), and, while over 200 taxa were listed as threatened at some level, the koala did not meet the criteria.

The submission provides a history of koala management in Victoria, documenting translocations by decade, as well as an assessment of the current distribution of koalas in the State. While densities of koalas vary widely, those that exceed three to four animals per hectare frequently result in overbrowsing. The results provided for 3 sites indicate a density of 1 koala per hectare is not uncommon, and extrapolation to the "broad vegetation types utilized by koala in Victoria" gives a total population estimate of 52,000 animals in the State of Victoria alone.

Mr. Taylor presented the specific actions that Victoria has taken in recent years to protect koalas and their habitat. Victoria's Biodiversity Strategy calls for a reversal in the decline of native vegetation with a goal of no net loss by 2001. The Planning and Environment Act of 1987 includes the objective to assist the protection of biodiversity, and the Land for Wildlife Program provides mechanisms to conserve areas of environmental significance. The view of the Department of Natural Resources and Environment is that Victoria has a strong viable koala population in the wild, and thus listing would only divert attention from the species that are under threat.

Mr. Brian Gilligan, Director General of the New South Wales National Parks and Wildlife Service, wrote that the population there is intermediate in physical size between the larger southern koalas in Victoria and South Australia and the smaller northern koalas in Queensland. The population in New South Wales was decimated by hunting until it was estimated to contain only 1,000 koalas by 1920. Researchers believed the population had recovered to 5,000–10,000 koalas by the 1970s. The koala was listed as vulnerable under the New South Wales Endangered Fauna Act 1991 and more recently has the protection of threatened species and the Threatened Species Conservation (TSC) Act 1995, which replaced the earlier law. Because the koala is an ecological specialist, it is vulnerable to local extinctions. The letter details several steps that New South Wales has taken to help koala recovery in the State. Under the State Environmental Planning Policy 1995, a detailed habitat assessment is required before approving development of greater than 1 hectare in local government areas where koalas are known to exist. As required of any vulnerable species, the TSC Act requires the National Parks and Wildlife Service to prepare a recovery plan within 10 years. Also, the New South Wales government has begun creating forest reserves under the Regional Forest Agreements (RFAs). The State government has reserved 600,000 hectares so far, and, by their assessment, a large proportion of this land is koala habitat.

Mr. Greg Gordon of Queensland National Parks and Wildlife Service qualified his earlier comments in the proposed rule, that koalas could become vulnerable in the future. "I would see this as a long-term possibility only, as a result of continuing land clearing, assuming clearing is unchecked. It is difficult to put a time frame on this but I would think it would be many decades

away, e.g. 50–100 years." Gordon wrote that the main problem is that most koala sites have poor habitat protection as they occur on privately managed land, which may be at risk of partial or total clearing at some time in the future. He added that in Queensland conservation measures for private lands are being developed, and more effective habitat protection is likely to be available in the medium term.

Mr. Mark S. Canty submitted a letter opposing the proposal. He contrasted the national system of "Landcare" groups that have been forming in Australia, with the RFAs being set up by the government with the goal of preserving 15 percent of forest types that existed in Australia prior to 1750. Mr. Canty said that the result of these preservation targets has been an increase in areas being cleared by landholders to avert government decrees, and he expressed his concern that listing the koala would have the same negative impact, with landholders not reporting koala sightings for fear of being told how to manage their property. Mr. Canty expressed the view that agriculture and housing developments represent a greater threat to koalas than forestry practices. We fully understand this viewpoint, and we are aware that even the perception of imposed solutions stimulated by those living far from the effected land can have a counterproductive effect. Nothing in this listing in any way limits or directs specific measures in Australia for the benefit of koala conservation, on either the State or the Federal level.

Ms. Christine Hopkins, Executive Director of the Australian Regional Association of Zoological Parks and Aquaria (ARAZPA), provided valuable information related to the koala from the international to the state level. The summary of status and legislation was developed by the Monotreme & Marsupial Taxon Advisory Group. Convener Gary Stator said that the Taxon Advisory Group could see no basis to list the species as endangered, and Ms. Hopkins said the ARAZPA could find no evidence in support of listing the species as threatened.

Senior officials at the American Zoological Association (AZA) have modified the position stated in the previous submission of the AZA. Ms. Kristin Vehrs, Dr. Michael Hutchins, and Mr. Robert Howarth maintain that the data provided fail to meet the listing criteria under the Act, specifically that the species is threatened throughout its entire range. While acknowledging that certain koala populations in New South Wales and Queensland continue to be threatened, studies conducted in

Victoria and South Australia suggest that the koala has begun to reestablish itself there. AZA stated that while some areas may meet the habitat loss criterion for listing, none currently meet the overutilization criterion in this instance. They conclude that no commercial exploitation occurs, and the few koalas going to zoos for research and educational display do so under permits with conditions that are highly restrictive. AZA notes that while habitat loss has been extensive, the Commonwealth and each State have their own management plans to reverse that trend. We concur with the AZA comments that koalas do not face the same magnitude of threats throughout Australia. The criteria for a threatened species, however, is one that is likely to become endangered throughout all or a significant portion of its range.

#### What Were the Substantive Comments of Those Who Favored Listing the Koala as Threatened?

Ms. Valerie Thompson, North American Koala Population Manager for the AZA, expressed support for listing the koala as threatened. She based her view on field expeditions mapping koala habitat in conjunction with the Australia Koala Foundation. She also submitted letters from other AZA member institutions, responses to a packet of information on the listing that she had sent out as an Executive Committee member of the Marsupial and Monotreme Taxon Advisory Group. She concluded the AZA did not have a consensus on the koala listing and included letters from institutions and scientists in which nine favored listing, four opposed, and two abstained. The letters included with Ms. Thompson's submission reflected divergent views of the status of koala within the zoo community in the United States, as was evident from the submissions of the scientists in Australia. To list a species, we must determine it meets the criteria based on information from scientists surveying koalas and their habitat.

Mr. Michael Kennedy, Director of Humane Society International (HSI), reiterated support for the listing of the koala as threatened. He stated that habitat clearance, particularly in the States of New South Wales and Queensland, is the greatest threat to koala survival. HSI reviewed the legislative actions taken since the previous comment period. Nominations were submitted under the national ESA 1992 to list the koala as "vulnerable" and "endangered" by different conservation groups; both of these nominations were denied, though some of the scientists evaluating the

proposals favored them. In New South Wales, where four koala populations were nominated as "endangered" under the New South Wales TSC Act, 1995, HSI noted that only one of the nominations was successful. In 1996, the Australian Government published the first National State of the Environment Australia. The document concluded that the "greatest pressures on biodiversity come from demands on natural resources by increasing populations of humans, their affluence and their technology." \* \* \* Habitat modification, has been and remains, the most significant cause of loss of biodiversity." The HSI letter stated that the Endangered Species Scientific Subcommittee (ESSS) recommended that vegetation clearance be recognized as a key threatening process as nominated by HSI. The Federal Minister for the Environment rejected the ESSS recommendation on legal but not biological grounds.

Ms. Deborah Tarbart, Executive Director of the Australia Koala Foundation (AKF), provided additional information on behalf of the foundation supporting the listing of the koala. The AKF has been actively adding areas to the Koala Habitat Atlas, and three of those areas were included as appendices with the submission. They demonstrate that a small percentage of primary koala habitat remains in particular areas that are associated with koalas. The AKF believes that overpopulation of koalas in some areas of Victoria and South Australia misdirects the debate, as they are atypical populations in isolated habitats.

The AKF submission also included papers on population trends and genetics of koalas presented at the Society for Conservation Biology meeting in Sydney, Australia, in 1998, and submitted for publication in the journal of that society. "Population trends and the conservation debate—issues affecting the conservation of koalas (*Phascolarctos cinereus*) in Australia" (Phillips 1998) provides demographic trends over several decades in three koala populations. Studies use different assessment methods; a covariance analysis shows that any differences in the slope of decline in the three areas are statistically not significantly different. The paper concludes that, because of the uncertainty inherent in population estimates and demographic trends, precautionary principles should be applied in conferring conservation status to species such as the koala.

The AKF appendixes also include an abstract and an unpublished review of koala genetics that have particular

pertinence in determining whether State populations can be considered valid subspecies. They suggest that the view of koala subspecies is changing with new molecular data, and that information was important in the later discussion of subspecies as significant vertebrate population segments. The genetics review also provided a better understanding of the chlamydia that affects most koala populations. DNA analysis showed that the chlamydia species infecting koalas most commonly is *Chlamydia pecorum*, which also causes infections in domestic livestock (Glassick et al. 1966).

Ms. Julie Zyzniewski, President of the Koala Council in Queensland, wrote that, while the State and local governments have adopted some measures to stabilize the population in southeast Queensland, habitat destruction in the rest of the State and elsewhere in Australia had worsened. The Koala Council therefore strongly supports listing in the belief that it will provide moral support for community-based organizations such as the Koala Council.

Ms. Donna Hart and Dr. Ron Orenstein of the International Wildlife Coalition, based in the United States and Canada, reiterated their support of the listing. They maintained that the decline in eucalyptus-dominated woodland in southeastern Australia continues, and the policies of the many Australian jurisdictions appear to be aimed at accelerating this decline rather than halting it. As this is not true of all areas, IWC would favor a State-by-State listing.

Dr. Frank N. Carrick of the University of Queensland makes several points in support of the listing proposal. Queensland is the only State where the koala can be "considered to approach a natural condition in terms of number, distributional range and genetic and demographic integrity." The State also has one of the world's highest rates of clearing of native vegetation. Moreover, the riparian or coastal and lower altitude forests favored by koalas are the forests most extensively destroyed and fragmented for agriculture, grazing, intensive forestry, and residential development. The high-density koala population in southeastern Queensland—which Dr. Carrick sees as having a vital role in the survival of the species over evolutionary time—is the area of fastest human population growth in Australia. As for the ability of government regulation to reverse these trends, Dr. Carrick expressed the view that the Queensland Nature Conservation Act has inherent deficiencies that have resulted in the

downgrading of the classification of the koala from "permanently protected" to the "common fauna" category.

We concur that the State with the most robust koala population in Australia also has the population at most serious risk. While we recognize that the Queensland government has enacted a State Planning Policy (SPP1/95) to control land allocation processes that are threatening koala populations, it will take years of monitoring to determine whether the Policy has been effective and the trend has been reversed in Queensland.

Dr. Tony Norton, Royal Melbourne Institute of Technology, commented primarily on the forestry assessments that have been undertaken since the proposed listing. These assessments will serve as a basis for setting new guidelines for land allocation, forest management, and forestry sawlog and woodchip quotas over the next 20 years. Dr. Norton found that none of the assessments that have been completed so far have delivered their intended goals of a world class forest conservation reserve system or world class forest management practices and concludes that the habitat of the koala in the wild is endangered. He therefore reasserted his support for the listing to force Australian governments to meet both national and international commitments from the preservation of the country's biodiversity.

Mr. Robert Bertram of the South East Forests Conservation Council provided thorough documentation of the demise of the koala population in one part of New South Wales. At present 39 percent of the high-quality koala habitat in the area is reserved in National Parks, and resource agreements prevent reducing the intensity of current logging operations in the remainder of the quality habitat. Claiming that the government has demonstrated disregard for the known science and the precautionary principle in making land-use decisions, the Council gave its view that the situation of the koala in the region and across New South Wales on public land is uncertain at best.

Mr. D.J. Schubert writing on behalf of the original petitioners (AFA and FFA) expressed frustration with the delay in publishing the proposed rule from the petition submitted in May 1994. The AFA and FFA contend that conditions have only declined further since their earlier comments and that the koala now merits endangered status throughout its range. They concur with other comments that most of the habitat destruction is the result of timber, agriculture, mining, and development. Most of the clearing of eucalypt forests

is for the export woodchip markets. The submission also points out that the Australian Government has redefined the forest to include woodlands, plantations, and other areas not regarded as native forest. The effect has been to increase the amount of land considered forest in Australia from 41 to 157 million hectares (Dovers *et al.* 1996). The AFA-FFA submission documents the development of the RFAs in Victoria, where the process has proceeded faster than in other States, and maintains that the new assessment provides "virtually no benefit" for the koala and its habitat. Given the specificity of the food and habitat requirements of the koala, inclusion of additional areas as RFAs may give an artificially high estimate of the land area that constitutes potential koala habitat.

**Why Should We Consider the Koala, a Species That Is Not Native to the United States and That Is Only Rarely Imported To Be Displayed in Zoos, for Listing Under the ESA?**

This question is one that people asked in letters from the Government of Australia as well as the States within the country. As the koala does not naturally cross national boundaries and is not in legal international commercial trade, why should we take the considerable time to consider the species as threatened?

The ESA is not restricted to species native to the United States, or those subject to international trade. The Act considers national boundaries, but makes that consideration secondary to the concern for the survival of species. The Act obligates us to make a determination in response to a petition.

As for the priority of such foreign species, with so many other important priorities in international wildlife conservation, we have proceeded deliberately with the listing process, sometimes to the dismay of the petitioners. We have found that, during listing consideration, with its requirements for public comment and consideration of those comments in developing a final decision, sometimes important strides have been made by the countries in the conservation measures that have been developed or enforced. In such cases, the ESA provides an important conservation benefit.

**Given That Koalas Occur Over Most of Their Historic Range and Are Overpopulated in Some Areas, How Can the Species Be Considered Threatened?**

While no agreement exists on an estimate of the number of koalas in Australia, most scientists concur that

the species is still widespread. Neither the petitioners nor the Australian Nature Conservation Agency (Phillips 1990) attempted to provide a total estimate of current koala numbers in Australia. Other parties have suggested overall numbers ranging from about 40,000 to 400,000, with the Australian Koala Foundation supporting the lower figure. In their comments on the petition, Drs. Martin and Handasyde indicated that there probably are tens of thousands of koalas at each of several study sites in Victoria alone.

As we pointed out in the proposed rule, the actual number of koalas that were present at various times in the past and that may still exist is of much interest and helps to give some perspective but, as for many species, may not be the critical factor in determining whether the species is threatened. A low figure may reflect natural rarity of a population in marginal habitats. A high figure may be misleading if the entire habitat of the involved population faces imminent destruction.

In this instance, a significant amount of the remaining koala habitat will be lost in the near future if the current trend of land clearance is not reversed. As koalas still exist in many of these areas, if land use measures are carried out to preserve the habitat that supports koalas and many other species, robust populations can be maintained. Such land use policies have been proposed in some States.

**Given the Different Laws Under Which They Are Managed, Why Don't We Consider the Koala for Listing on a State-by-State Basis?**

We recognize the objections of the Australian Government, Australian State governments, and others to a blanket listing of the koala throughout its range. In the proposed rule, we stated that, if we received strong biological arguments, we would consider giving separate consideration to particular populations. It should be recognized, however, that koalas cannot be considered separate populations solely because they reside in different State jurisdictions.

Our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722) establishes that, while international government boundaries with differences in management do qualify as discrete populations, political boundaries within countries do not. We do not specify significant populations solely by State in the United States, and we cannot do this in Australia.

However, three subspecies of koalas are currently recognized based on morphological differences in skins and skulls. The koala in northern Queensland (*Phascolarctos cinereus adustus*) is described as smaller and having a more reddish fur than the animals from New South Wales (*P.c. cinereus*), while the subspecies native to Victoria and South Australia (*P.c. victor*) is larger than the koalas of New South Wales, with a more uniformly brown coat color. The subspecies boundaries have been equated with the State borders, although there are no major geographical barriers separating the States of Queensland, New South Wales and Victoria. Scientists suggest that these differences represent variation along a cline and reflect adaptation to climate differences over the extensive range of the species. (Lee and Martin, 1988). What was necessary in this case was to determine whether these subspecies represent evolutionarily significant units—a geographically discrete set of historical populations (Ryder, 1986) that coincided with state borders.

#### **Do the Three Koala Subspecies Qualify as Distinct Vertebrate Population Segments?**

Our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722) requires that a population meet the dual criteria of discreteness and significance. In evaluating whether the koala subspecies meet the discreteness criterion, we reviewed a recently published study in which Australian scientists addressed this question (Houliden *et al.* 1999). A recent study of koala mitochondrial DNA from 200 koalas in 16 populations across their range showed that, while there are significant differences between local populations, those differences are not reflected in further differentiation consistent with the current subspecies designations. The authors conclude: "There was no support for a delineation between the *P.c. cinereus* and the *P.c. victor* subspecies. In addition, there is evidence to the contrary for the delineation between the *P.c. adustus* and *P.c. cinereus* at the Queensland /New South Wales border."

This conclusion is supported by recent genetic analyses of captive koalas as well (Takami, 1998). The current subspecies, dividing populations at State borders, do not constitute evolutionarily significant units nor do they meet the criteria for discrete vertebrate population segments.

While using the subspecies taxonomy may have been expedient, given the

difference in management between States, we agree with views expressed by the scientists in Australia that "clearly the existing subspecific taxonomic classification of koalas may not adequately reflect actual levels of genetic diversity, and conservation priorities set on the basis of the currently recognized subspecies may be deficient" (Sherwin *et al.* 1998). Therefore, we cannot separate koala subspecies into distinct vertebrate population segments for purposes of listing under the Act.

#### **What Is the Status of the Koala in Regard to the Five ESA Listing Factors?**

Section 4(a)(1) of the ESA and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the following factors described in section 4(a)(1). These factors and their application to the koala (*Phascolarctos cinereus*) are as follows.

##### *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The known historical range of the koala covered an extensive band of forest and woodland in eastern and central Queensland, eastern New South Wales, most of Victoria, and extreme southeastern South Australia. The government, the petitioners, and independent scientific authorities agree that the primary cause of the decline of the koala is destruction of its habitat. This situation is exacerbated by the species' high degree of specialization. Koalas favor particular species of eucalyptus, and populations tend to be concentrated at certain favorable sites. The reproductive rate is relatively low, the maturity rate is slow, and many of the young must disperse.

With human disruption of suitable eucalyptus forests and woodlands, the koala has disappeared from much of its original range. In designating the koala as "potentially vulnerable," the IUCN/SSC Australasian Marsupial and Monotreme Specialist Group noted that the geographic range of the species had declined by 50 to 90 percent (Kennedy 1992).

A publication of the Australian Nature Conservation Agency (Phillips 1990) contains the following statement: "The expansive forests where koalas once lived \* \* \* have largely gone and those which remain are rapidly disappearing to make way for the needs of human society." The publication

cited a 1984 report by the Australian Commonwealth Scientific and Industrial Research Organization (CSIRO) indicating that the total area of medium-to-tall trees in the four States inhabited by the koala is estimated to originally have been just over 1,230,000 square kilometers (km<sup>2</sup>) [475,000 square miles (mi<sup>2</sup>)], but that just over half of those forests, 670,000 km<sup>2</sup> (259,000 mi<sup>2</sup>), had been removed or severely modified.

The petitioners and several of those who commented provided details on the continued habitat loss and modification. This problem is caused mainly by commercial logging, clearing for agriculture and urbanization, as well as disease and extensive dieback of the trees on which the koala depends. The problem is not only removal of the large eucalyptus trees used for food and shelter, but also elimination of vegetated dispersal routes, erosion, siltation of water sources, fragmentation through development of road networks, and other factors detrimental to maintenance of viable koala populations. Based on data compiled in the same 1984 CSIRO report cited above, the petitioners calculated the loss of forest during the past 200 years at 43–52 percent in Queensland, 60–80 percent in New South Wales, 59–75 percent in Victoria, and 79–100 percent in South Australia. An additional government report in 1992 estimated that 60 percent of the remaining forests in Australia are composed of eucalyptus, but that only 18 percent of these areas are unmodified by logging.

Subsequent to receipt of the petition, the Australian Department of the Environment, Sport and Territories issued two new pertinent reports (Glanznig 1995; Graetz *et al.* 1995). These documents indicate that the primary habitat utilized by the koala originally covered as much as 1,400,000 km<sup>2</sup> (540,000 mi<sup>2</sup>), but that about 890,000 km<sup>2</sup> (340,000 mi<sup>2</sup>), or approximately 63 percent, now has been cleared or thinned. Those figures may well be excessive, as the koala was not uniformly distributed throughout the involved region and tended to concentrate in certain favorable areas.

In any case, the new reports support the percentages of forest loss cited above for each of the States involved. Perhaps most significantly, such land clearance is not a phenomenon of the past but is continuing and even intensifying. The estimated annual average amount of land cleared in Queensland, New South Wales, and Victoria from 1983 to 1993 was approximately 4,600 km<sup>2</sup> (1,800 mi<sup>2</sup>). Estimates for some recent years are approximately twice as great. Glanznig

(1995) pointed out that the amount of native vegetation cleared in Australia in 1990 was more than half that cleared in Brazilian Amazonia.

Not all of the clearing in Queensland, New South Wales, and Victoria is in koala habitat, and some of the clearing involves reclearing of secondary growth; nonetheless, a 1993 estimate cited by the petitioners indicates that, if the current rate of deforestation continues, Australia's forests would be eliminated in less than 250 years. Much of the forest loss is associated with the production of woodchips, mainly for exportation to paper mills in Japan. Therefore, we find that the koala is threatened in a significant portion of its range due to the present and threatened destruction, modification, and curtailment of its habitat.

#### *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Koala populations were devastated by the commercial fur trade. Populations may have fluctuated considerably through the 19th century in association with such factors as disease and the intensity of aboriginal hunting. It does seem evident, however, that in the early 20th century, the number of koalas in Australia was well into the millions. Such a figure is based on the number of koalas killed for the commercial fur market during that period. In some years, the number of koalas taken may have exceeded 2,000,000, and, as late as 1927, 600,000 to 1,000,000 were killed in Queensland alone. This destruction, possibly along with a *Chlamydia* epidemic (Phillips 1990), may have reduced koala numbers to just a few thousand. Subsequent conservation efforts, termination of the fur trade, and reintroduction apparently led to a partial recovery by the mid-20th century.

Today overutilization is not a problem. Although some animals reportedly are illegally hunted, and a few koalas are exported to zoos for educational purposes, we conclude that overutilization is not a factor threatening the survival of the species.

#### *C. Disease or Predation*

Experts have been concerned about the effects of the bacterium *Chlamydia*, which is known to occur in most koala populations. This disease-causing organism manifests itself in several ways, but especially through infections of the eyes and urinary tract. It apparently has long been associated with the koala and may have been responsible for devastating epidemics in the late 19th and early 20th centuries

(Phillips 1990). Genetics research has shown that at least two species of *Chlamydia* infect koalas (Glassick et al. 1996). *Chlamydia pecorum* causes most of the reproductive tract disease in koalas, and this species also causes infections in domestic livestock (Jackson et al. 1997). The adverse effects of the disease are intensified through the stress caused by habitat loss and fragmentation. *Chlamydia* is widespread in mainland koala populations and evidently was responsible for recent declines at some localities, but it is not claimed to be an immediate threat to the overall survival of the species. In some areas, introduced koala populations that are *Chlamydia*-free show a higher reproductive rate requiring management to avoid overbrowsing of critical tree species. The koala is also subject to various other diseases and, particularly in areas of rapid development, is subject to predation and harassment by domestic dogs and other introduced animals. While disease and predation are exacerbating factors, they would not, in the absence of other factors, cause any koala population to be threatened.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

Although State laws generally protect the koala from direct taking and commercial utilization, much of the petitioners' argument is based on a lack of regulatory mechanisms that adequately protect the habitat of the species. Although a significant portion of the koala's remaining habitat is on government land, such ownership does not preclude logging and other modification. Researchers have particular concern that deforestation for the woodchip market is proceeding without proper assessment of environmental impacts. Even if such impacts were taken into account, the petitioners argue the welfare of the koala would not be given adequate attention because the species is not listed pursuant to Australia's ESPA. We can look at the situation of the koala in each State to determine the adequacy of the current regulations.

Though the koalas of Queensland are the smallest in size, the State has the largest koala population, and the most remaining koala habitat of the States. Queensland also has one of the highest rates of clearing of native vegetation. Under the National Forestry Policy, the rate of clearfelling continues to be high on private lands. According to the 1996 assessment of the Australian and New Zealand Environment and Conservation Research Council, the koala population is stable in some areas, thinly scattered in many others, and in steep decline in

some coastal areas. A consensus exists that the population overall is declining at different rates depending largely on the degree of development. The situation is particularly critical in southeast Queensland, where urbanization threatens the still substantial koala population. Despite legislation that includes the Nature Conservation Act 1992 and the State Planning Policy 1995, the major threat is poor habitat protection for most of the koala population.

In New South Wales, koalas were once abundant throughout the eastern half of the State and driven to near extirpation by the 1920s. The State government estimates that the population recovered to 5,000–10,000 by the 1970s, with the largest and most secure population in the northwest part of the State. The State government also is concerned that continued habitat fragmentation could lead to local extinctions. For that reason, the koala was listed as a vulnerable species under the NSW Endangered Fauna (Interim Protection) Act, 1991. When that law was replaced by the Threatened Species Conservation Act, 1995, the koala continued to be designated as vulnerable by the independent Scientific Committee created with the new legislation. The New South Wales Scientific Committee recently decided that the Hawks Nest and Tea Gardens koalas meet the criteria of an endangered population.

Koalas are native to the Australia Capital Territory, although they were very rare by 1901. Currently the population is small and likely the descendants of several introductions from Victoria. Almost all of the koalas in Victoria represent the success of reintroduction efforts, as the species was extirpated in the State by the early 1900s, with the exception of three remnant populations (Lewis, 1934). Koalas were introduced to Phillip and French Islands by the 1890s, and it is from translocations of these populations, which began to overcrowd their island habitats, that the present population largely descends.

As reported in the review of previous comments, substantial disagreement exists on the actual numbers of koalas and their densities in some sites where they are abundant. In their submission, the Department of Natural Resources and Environment reports that population censuses indicate that densities of 0.5–1 animal per ha are not uncommon, and they supported that contention with recent data from three sites where over-browsing is occurring. The Department has recently conducted statewide vegetation mapping and

concluded that although 60 percent of koala habitat has been lost since European settlement, 5.2 million ha remain. If there is 1 koala per 100 ha in these habitats, the Department estimates a total population of at least 52,000 koalas.

There has been criticism of this extrapolation approach to koala population estimation, particularly as they assume habitat homogeneity over broad geographic areas. (Phillips, 1998). The AKF submission specifically cites the Strathbogie Ranges in Victoria to illustrate the high degree of uncertainty associated with the koala population estimation. Using an alternative estimation method of modeling population growth, Phillips (1998) gives an estimate of 5,000 for the area, an order magnitude lower than earlier estimates (Martin submitted to USFWS 1995).

We cannot resolve the wide discrepancy in estimates of the koalas in Victoria, and the underlying assumption of the carrying capacity of certain habitat type in the State. We do recognize that a continuous translocation program, while necessary to avoid ecological degradation of some plant communities, is not the best solution. The government of Victoria recognizes this as well and is taking further steps in its Biodiversity Strategy to reverse the decline of native vegetation by 2001. Victoria has managed its koala population to relative stability, albeit through intensive management.

At the time of European settlement, koalas occurred only in southeast South Australia, and by the 1930s they were considered extinct in the State. South Australia's present koala population is primarily in five localities and is the result of introductions from other States in Australia. Because these introductions come from disparate provenances and are relatively recent, the population in South Australia should not be considered a single subspecies. The population in the southeast of the State, the area where there were koalas at the time of European settlement, is the least stable, and additional reintroductions are planned. In contrast, on Kangaroo Island high koala density has led to the sustained overbrowsing on preferred food species. In 1998, 2,500 koalas on Kangaroo Island were sterilized and 850 were relocated to the southeast part of the State.

Land use practices vary enormously in different States, and they are currently undergoing evaluation and change in many jurisdictions. We conclude that the inadequacy of present

regulations over a significant portion of the species' range is a factor in designating the koala as threatened.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The petition and other sources indicate a number of additional problems confronting the koala. Perhaps most important from a long-term perspective is a loss of genetic variation resulting from fragmentation of habitat. Koalas show low levels of variation as measured at the protein and DNA levels. The genetic differentiation of isolated koala populations is becoming apparent, and in combination with high site philopatry and the species response to translocation, greatly increases the likelihood of inbreeding. This problem is further extenuated in populations that were founded from koalas that were maintained in a semi-natural environment on offshore islands. Lack of genetic variability could increase susceptibility to disease and other problems, particularly those resulting from rapidly changing Australian environments. Additional factors such as the increase in wildfires, attacks by domestic dogs, and automobile accidents all pose secondary threats that are the outcome of koala habitat decline.

#### **What Are the Available Conservation Measures as a Result of This Listing?**

Although habitat loss was a crucial factor in the determination that the koala is threatened, specific critical habitat is not being proposed, as its designation is not applicable to foreign species.

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, international cooperation, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal

action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. We are not aware of such actions with respect to the species covered by this proposal, except as may apply to importation permit procedures.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered and threatened species and to provide assistance for such programs in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 and 17.31, set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any threatened wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. These permits must also be consistent with the purposes and policy of the Act as required by Section 10(d). For threatened species, we may also issue permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of this listing on proposed or ongoing activities involving the species. Importations into and exportations from the United States, and interstate and

foreign commerce, of koalas (including tissues, parts, and products) from New South Wales and Queensland without a threatened species permit would be prohibited. Koalas removed from the wild or born in captivity prior to the date the species is listed under the Act would be considered "pre-Act" and would not require permits unless they enter commerce. When a specimen is sold or offered for sale, it loses its pre-Act status. Currently, 10 zoological institutions in the United States hold koalas. You can direct questions regarding permit requirements for U.S. activities to the Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203 (1-800-358-2104).

### Listing Priority Guidance

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (Petitions filed under section 4 of the Act) is the fourth priority. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

### Required Determinations

This rule does not require collection of information that requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for

endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. 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. This rule does not alter that information collection requirement.

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### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Koala .....	<i>Phascolarctos cinereus.</i>	Australia .....	Australia .....	T	698	NA	NA
*	*	*	*	*	*		*

Dated: April 25, 2000.

**Jamie Rappaport Clark,**

*Director.*

[FR Doc. 00-11507 Filed 5-8-00; 8:45 am]

**BILLING CODE 4310-55-U**

# Proposed Rules

Federal Register

Vol. 65, No. 90

Tuesday, May 9, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Chapter I

#### Revised High-Level Guidelines for Performance-Based Activities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is requesting public comment on its proposed revised high-level guidelines for developing a more performance-based regulatory framework. In addition, a process is proposed for implementing these guidelines. An on-line public workshop will be held to discuss the revisions and the proposed process.

**DATES:** The comment period expires June 23, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Our preference is for members of the public to use the on-line workshop on June 8, 2000 as the medium for providing comments.

**ADDRESSES:** Written comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** N. Prasad Kadambi, (301) 415-5896, Internet: npk@nrc.gov of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

1. Background
2. On-Line Public Workshop
3. NRC Staff Response to Public Comments
4. Revised High-Level Guidelines
5. Implementation of Revised Guidelines

### 1. Background

In the Staff Requirements Memorandum (SRM) to SECY-99-176, "Plans for Pursuing Performance-Based Initiatives," issued on September 13, 1999, the Commission directed the staff to develop high-level guidelines to identify and assess the viability of candidate performance-based activities. In response, the staff developed proposed guidelines which were published in the **Federal Register** on January 24, 2000 (65 FR 3615). Comments from stakeholders were discussed at a public workshop held on March 1, 2000, and also obtained through the submission of letters. This FRN addresses the staff's response to those comments.

### 2. On-Line Public Workshop

The NRC will hold an on-line public workshop on June 8, 2000, for the purpose of soliciting stakeholder reaction to the staff's response to comments offered relative to the high level guidelines published in 65 FR 3615 and the resulting changes to the guidelines. In addition, this workshop is being offered to provide a second opportunity for comment from members of the public who were unable to attend the first workshop held on March 1, 2000.

This workshop will be conducted over the internet. Stakeholders will be able to log onto the NRC's "Rulemaking Forum" website and offer comments at any time but preferably on June 8, 2000. The concept includes interaction with cognizant staff over the period of the workshop. All relevant documents, including comments submitted electronically by others, will be available at this site. In recognition of the different time zones where stakeholders may be located, electronic comments submitted after normal NRC business hours will be posted on June 9, 2000. Effective June 1, 2000, the public is invited to check the NRC's website at: [http://ruleforum.llnl.gov/cgi-bin/rulemake?source=PBA\\_RFC](http://ruleforum.llnl.gov/cgi-bin/rulemake?source=PBA_RFC) to obtain detailed instructions on how to participate in the on-line workshop.

Because some members of the public may not have ready access to the internet, an alternate method of communication will also be available during normal business hours on June 8, 2000. Toll free calls can be made to 1-800-368-5642. Callers may request Dr.

N. Prasad Kadambi at 415-5896, or Dr. Sidney Feld at 415-6193 to take note of their comments.

### 3. NRC Staff Response to Public Comments

The **Federal Register** Notice (FRN), 65 FR 3615 on January 24, 2000, requested comments on the proposed high-level guidelines with particular interest in a set of specific questions. Comments were provided at the March 1, 2000 workshop and in writing. The workshop was conducted as a facilitated discussion among stakeholders representing a wide variety of interests, including NRC staff representatives from various program offices. A transcription of the workshop is available on the internet under the "Meeting Transcripts" link in the NRC external website.

In the January 24, 2000 FRN, the staff specifically requested comments on a number of key questions concerning the proposed guidelines. The NRC's response to comments has been structured within the framework of the questions published in the January FRN. Comments not associated directly with any of the questions are shown under the heading "Other Comments".

The NRC's response to the comments and any indication as to how the guidelines have changed in response to the comments follows:

#### A. Clarity and Specificity of the Guidelines

1. Are the proposed guidelines appropriate and clear?

Diverse opinions were expressed regarding appropriateness and clarity of the guidelines with a strong indication that those opposed to the performance-based approach provided unfavorable responses and those supporting the approach provided favorable responses. Because the Commission has directed that performance-based initiatives be pursued, no revisions have been made in the main guidelines themselves. Revisions involving the amplifying language have been incorporated, as noted below.

2. Are there additional guidelines that would improve clarity and specificity?

One comment proposed a guideline to increase safety and another comment proposed a guideline to prevent incentives to "perverse" outcomes. As discussed below, a framework and process to increase safety by adding to

regulatory requirements (subject to the Backfit Rule) exists and it would not be efficient to duplicate this through additional guidelines. No changes were made in the main guidelines because safety and beneficial outcomes are generally desirable goals which form parts of normal staff considerations. However, the amplifying guidelines under "Maintain Safety" have been modified to emphasize that safety considerations will play the primary role in NRC's assessments. Since the Commission addressed the matter of encouraging and rewarding improved outcomes in the White Paper (SRM to SECY-98-144, "White Paper on Risk-Informed and Performance-Based Regulation") an amplifying guideline to this effect has been added. This amplifying guideline under overall net benefit generated a comment indicating a misunderstanding that cost would be given a greater emphasis than safety. A revision has been made regarding the considerations related to a simplified net benefit test.

3. How does the "high-level" nature of the guidelines affect the clarity and specificity of the guidelines?

The comments provided did not indicate any need to change any of the guidelines due to this factor. One commenter specifically endorsed the "high-level" approach to the guidelines, while also suggesting a graded approach incorporating a minimum acceptable risk. The staff interpreted "minimum acceptable risk" to mean a level of risk consistent with adequate protection considerations. The NRC agrees that a graded approach is appropriate for regulatory changes above and beyond adequate protection. The staff maintains that the guidelines, as currently formulated, allow for this; thus, no changes were made to address this comment.

#### B. Implementation of the Guidelines

1. What guidelines, if any, are mandatory for an activity to qualify as a performance-based initiative?

No mandatory guidelines were identified.

2. What is the best way to implement these guidelines?

An issue of considerable interest was whether a performance-based approach should be voluntary or not. Certain commenters believed that voluntary changes negatively affect the NRC's inspection and enforcement role whereas others maintained that changes must be voluntary to ensure flexibility on the part of licensees. It is anticipated that voluntary implementation will often be proposed, and where mandatory implementation is proposed,

such a change would be subject to the Backfit Rule.

3. How should the Backfit Rule apply to the implementation of performance-based approaches?

Most commenters indicated that reliance on a performance-based approach would have no bearing on whether or not the Backfit Rule applied. The NRC concurs that increased reliance on a performance-based approach poses no unique considerations relative to the Backfit Rule. One commenter expressed the view that the Backfit Rule should apply to reductions in regulatory burden. This comment goes well beyond the scope of these guidelines as currently envisaged.

4. Should these guidelines be applied to all types of activity, e.g. should they be applied to petitions for rulemaking?

To the extent that commenters favored application of the guidelines, they also supported application to all activities directed at improving the effectiveness of regulations. However, the staff maintains that if the activity does not possess the necessary attributes to support identification as a performance-based approach, it cannot be considered a candidate. It is in this context that one commenter acknowledged that it may not be appropriate for some regulations, such as the Fitness for Duty Rule. It should be noted that the guidelines would be applied to NRC's determinations in responding to and resolving petitions for rulemaking.

5. Should these guidelines only be applied to new regulatory initiatives?

Although some comments preferred widespread implementation, NRC currently plans to only implement the guidelines for new initiatives primarily because of NRC resource constraints.

6. Will these guidelines be effective in determining whether we can make a regulatory initiative more performance-based?

In general, to the extent that any comments were offered in this regard, the response was in the affirmative.

#### C. Establishment of Objective Performance Criteria

1. In moving to performance-based requirements, should the current level of conservatism be maintained or should introduction of more realism be attempted?

Commenters expressed the view that the appropriate level of conservatism depends on the analysis methodology and the applicable assumptions. Defense-in-depth and uncertainty factors also need to be considered. One commenter stated that it should not be assumed that the level of defense-in-

depth remain the same in a performance-based approach. In response to these comments, amplifying guidelines have been added under the main guideline of "Increase effectiveness, efficiency and realism of the NRC activities and decision-making".

2. What level of conservatism (safety margin) needs to be built into a performance criterion to avoid facing an immediate safety concern if the criterion is not met?

The comments and response from (C.1) above are also applicable here.

3. Recognizing that performance criteria can be set at different levels in a hierarchy (e.g., component, train, system, release, dose), on what basis is an appropriate level in the hierarchy selected for setting performance-based requirements, and what is the appropriate level of conservatism for each tier in the hierarchy?

Oral and written comments expressed the view that performance criteria are best set at the function or system level. Some amplifying guidelines have been added under the main guideline of "Increase effectiveness, efficiency and realism of the NRC activities and decision-making".

4. Who would be responsible for proposing and justifying the acceptance limits and adequacy of objective criteria?

A commenter suggested that the proponent of a change should bear the responsibility for justifying the criteria and the adequacy of acceptance limits. Some amplifying guidelines have been added under the main guideline of "The performance-based approach can be incorporated into the regulatory framework".

5. What are examples of performance-based objectives that are not amenable to risk analyses such as PRA or Integrated Safety Assessment?

Examples offered were cross-cutting issues, including fitness-for-duty, safety conscious work environment and management effectiveness. No changes were made to the guidelines in response to these comments.

6. In the context of risk-informed regulation, to what extent should performance criteria account for potential risk from beyond-design-basis accidents (i.e., severe accidents)?

A commenter stated that risk-informed regulation reaches beyond design basis events by its nature. Performance criteria would not normally go beyond the design basis. Exceptions, if they occur, are most likely if the design is found not to provide the expected safety margin. If exceptions arise, the generic issue

process followed by the staff is capable of addressing the special circumstances. As currently constructed, these considerations can be readily handled in the guidelines, and no changes in the guidelines were made.

#### *D. Identification and Use of Measurable (or Calculable) Parameters*

1. How and by whom are performance parameters to be determined?

Comments were presented expressing concern that the NRC would be entirely dependent on licensees' own reports regarding performance. One commenter has stated that information collection at nuclear facilities may require changes to better measure performance. In the NRC's view, performance parameters are typically determined jointly by NRC and licensees, with the NRC having final authority in the determination. Further, the NRC would always maintain vigilance over performance observations. If information collection requirements need to be changed to implement a performance-based approach, such proposals will be addressed in the context of the specific regulatory requirement under consideration. No changes were made in the guidelines on account of this consideration.

2. How do you decide what a relevant performance parameter is?

Some commenters expressed reservations with the use of performance parameters such as core damage frequency as a calculable parameter. Other comments cautioned against drawing broader conclusions (such as overall level of safety or lack thereof) from performance measures than may be justified. As these considerations are context specific, and the merits of specific performance parameters are explicitly considered by the guidelines, no changes are proposed in the guidelines.

3. How much uncertainty can be tolerated in the measurable or calculated parameters?

Comments indicate a strong connection between consideration of uncertainty and the level of conservatism in establishing the performance parameters and acceptance criteria. Changes made in response to (C.1) above are also applicable to this issue.

#### *E. Pilot Projects*

1. Would undertaking pilot projects in the reactor, materials, and waste arenas provide beneficial experience before finalizing the guidelines?

Some commenters stated that pilot projects would be useful, and others stated that they were not needed. One

commenter suggested that it was important to learn appropriate lessons from implementation of the maintenance rule. Another commented that Option B of 10 CFR 50, Appendix J has already appropriately demonstrated the favorable results from a performance-based regulation. The staff plans to consider an exercise to apply the guidelines to specific regulations as part of the implementation process.

2. What should be the relationship between any such pilot projects and those being implemented to risk-inform the regulations?

Commenters generally stated that the ongoing pilot projects related to risk-informing the regulations need not be perturbed by including consideration of the guidelines, but appropriate coordination should be maintained. Any screening of regulations should be done one time as opposed to subjecting each regulation to various screenings at different times under different processes. The staff proposes to integrate the interfaces between performance-based and risk-informed activities so as to help ensure a more integrated approach and avoid duplication.

#### *F. Other Comments*

1. Eliminate all high-level guidelines used to evaluate opportunities for regulatory improvement (II. *Guidelines to Assess Performance-Based Regulatory Improvement*):

One commenter at the public workshop suggested that the set of guidelines to assess performance-based regulatory improvement be eliminated. The staff continues to believe that this set of guidelines constitutes an integral part of a structure and logic to consider explicitly the values important to any regulatory improvement program. No changes were made based on this comment.

2. Inclusion of the Advisory Committee on Medical Uses of Isotopes (ACMUI):

One commenter at the public workshop suggested that ACMUI should be included among the advisory committees which would have an opportunity to review the high-level guidelines. ACMUI has been included with ACRS and ACNW as committees whose feedback will be sought before the guidelines are submitted to the Commission.

3. Inclusion of perspective from the NRC regions in the work of the Performance-Based Regulations Working Group (PBRWG):

One commenter at the public workshop suggested that a

representative from the NRC regional offices should be included in the PBRWG, which will play an instrumental role in developing and applying the guidelines. The NRC staff accepted the merit of this suggestion and regional representation has been added to the PBRWG.

4. Inspection and enforcement considerations:

An NRC staff member provided a comment that inspection and enforcement aspects should be front-end considerations. Another commenter has suggested that performance above a threshold should result in reduced NRC scrutiny. An amplifying guideline has been added under the guideline "The performance-based approach can be incorporated into the regulatory framework" to address this comment.

5. Consideration of a significantly different regulatory paradigm:

One commenter offered suggestions to significantly modify the regulatory framework so that any changes undertaken by the NRC would have as a pre-requisite an improvement in the level of safety. The proposals presented would have wide ranging impacts, and consideration of performance-based initiatives would be only tangentially related to most of them. No specific changes to the guidelines were made in consideration of these comments.

#### **4. Revised High-Level Guidelines**

The following proposed revised guidelines are to be applied in the reactor, materials, and waste arenas. The nature of the regulated activity would determine which guidelines apply and the extent of the application.

##### *I. Guidelines To Assess Viability*

The NRC will apply the following guidelines (which are based on the four attributes in the White Paper) to assess whether a more performance-based approach is viable for any given new regulatory initiative. This assessment would be applied on a case-by-case basis and would be based on an integrated consideration of the individual guidelines. The guidelines are listed below:

A. Measurable (or calculable) parameters to monitor acceptable plant and licensee performance exist or can be developed.

a. Directly measured parameter related to safety objective is preferred;

b. A calculated parameter may also be acceptable; if it is related to the safety objective of the regulatory activity.

c. Parameters which licensees can readily access, or are currently accessing, in real time are preferred.

d. Parameters monitored periodically to address postulated or design basis conditions may also be acceptable.

B. Objective criteria to assess performance exist or can be developed.

a. Objective criteria are established based on risk insights, deterministic analyses and/or performance history.

C. Licensees would have flexibility in meeting the established performance criteria when a performance-based approach is adopted.

a. Programs and processes used to achieve the established performance criteria would be at the licensee's discretion.

b. A consideration in incorporating flexibility to meet established performance criteria will be to encourage and reward improved outcomes.

D. A framework exists or can be developed such that performance criteria, if not met, will not result in an immediate safety concern.

a. A sufficient safety margin exists.

b. Time is available for taking corrective action to avoid the safety concern.

c. The licensee is capable of detecting and correcting performance degradation.

## II. Guidelines To Assess Performance-Based Regulatory Improvement

If a more performance-based approach is deemed to be viable based on the guidelines in (I. Guidelines to Assess Viability) above, then the regulatory activity would be evaluated against the following set of guidelines to determine whether, on balance, after an integrated consideration of these guidelines, there are opportunities for regulatory improvement:

A. Maintain safety, protect the environment and the common defense and security.

a. Safety considerations play a primary role in assessing any improvement arising from the use of performance-based approaches.

b. The level of conservatism and uncertainty in the supporting analyses would be assessed to ensure adequate safety margins.

B. Increase public confidence.

a. An assessment would be made to determine if the emphasis on results and objective criteria (characteristics of a performance-based approach) can increase public confidence.

C. Increase effectiveness, efficiency and realism of the NRC activities and decision-making.

a. An assessment would be made of the level of conservatism existing in the currently applicable regulatory requirements considering analysis methodology and the applicable

assumptions. Any proposal to increase or decrease conservatism would take into account uncertainty factors and defense-in-depth relative to the scenario under consideration.

b. An assessment would be made of the performance criteria and the level in the performance hierarchy where they have been set. In general, performance criteria should be set at a level commensurate with the function being performed. In most cases, performance criteria would be expected to be set at the system level or higher.

D. Reduce unnecessary regulatory burden.

E. A reasonable test shows an overall net benefit results from moving to a performance-based approach.

a. A reasonable test would begin with a qualitative approach to evaluate whether there is merit in changing the existing regulatory framework. When this question is approached from the perspective of existing practices in a mature industry, stakeholder support for change may need to be obtained.

b. Unless imposition of a safety improvement or other societal outcome is contemplated, expending resources for a change in regulatory practice would be justified in most cases only if NRC or licensee operations benefit from such a change. The primary source of initial information and feedback regarding potential benefits to licensees would be the licensees themselves.

c. A simplified definition of the overall net benefit (such as net reduction in worker radiation exposure) may be appropriate for weighing the immediate implications of a proposed change.

F. The performance-based approach can be incorporated into the regulatory framework.

a. The regulatory framework may include the regulation in the Code of Federal Regulations, the associated Regulatory Guide, NUREG, Standard Review Plan, Technical Specification, and/or inspection guidance.

b. A feasible performance-based approach would be one which can be directed specifically at changing one, some, or all of these components.

c. The proponent of the change to the components of the regulatory framework would have the responsibility to provide sufficient justification for the proposed change; all stakeholders would have the opportunity to provide feedback on the proposal, typically in a public meeting.

d. Inspection and enforcement considerations would be addressed during the formulation of regulatory changes rather than afterwards. Such considerations could include reduced

NRC scrutiny if performance so warrants.

G. The performance-based approach would accommodate new technology.

a. The incentive to consider a performance-based approach may arise from development of new technologies as well as difficulty stemming from technological changes in finding spare components and parts.

b. Advanced technologies may provide more economical solutions to a regulatory issue, justifying consideration of a performance-based approach.

## III. Guidelines To Assure Consistency With Other Regulatory Principles

A. A proposed change to a more performance-based approach is consistent and coherent with other overriding goals, principles and approaches involving the NRC's regulatory process.

a. The main sources of these principles are the Principles of Good Regulation, the Probabilistic Risk Assessment (PRA) Policy Statement, the Regulatory Guide 1.174, "An Approach for Using PRA in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and the NRC's Strategic Plan.

b. Consistent with the high-level at which the guidance described above has been articulated, specific factors which need to be addressed in each case (such as defense in depth and treatment of uncertainties) would depend on the particular regulatory issues involved.

## 5. Implementation of Revised Guidelines

Implementation of the guidelines could have an agency-wide impact. Hence, implementing the revised guidelines requires that the staff obtain Commission approval for the guidelines themselves and the process for implementing them. Additionally, the NRC has been directed by Congress to revise existing outdated or paperwork-oriented regulations to make them performance-based. Subject to any Commission guidance received, the staff plans to apply the guidelines proposed in this FRN relative to meeting this Congressional mandate.

A two-step process is proposed to implement the above guidelines. Each step is addressed as follows:

### A. Step 1: Obtain Commission Approval of Guidelines

Subsequent to the public workshop on June 8, 2000, the NRC staff will make presentations or provide information to the ACRS, ACNW and ACMUI so as to obtain their advice on the above

guidelines. The staff will propose sample case studies to exercise the guidelines. Included in the presentations will be a discussion of stakeholder comments and responses. The feedback from the advisory committees will be incorporated into a Commission paper, as appropriate, and the paper will be submitted to the Commission by August 21, 2000.

*B. Step 2: Implement the Finalized Guidelines into the Regulatory Improvement Process*

The guidelines, which will be used to identify and assess performance-based activities, will only be applied to new initiatives. The basic process would be institutionalized by incorporating the elements into internal NRC procedures. Regulatory requirements that are overly prescriptive may be proposed for improvement by members of the NRC staff, industry, or the public (as a petition for rulemaking, for example). More widespread acceptance of the guidelines would be likely if the guidelines were also used by industry to increase the level of performance-based activities. For example, the guidelines could be adopted for use by standards developing organizations or industry working groups as they develop proposals for consideration by NRC. NRC review of such proposals for incorporation into the regulatory framework would then be considerably more streamlined.

The guidelines would serve as one of the tools available to the staff to assess whether a more performance-based approach is appropriate for a given regulatory initiative. If the evaluation shows that safety improvements are justified, relevant requirements associated with the proposed change (e.g. compliance with the Backfit Rule, preparation of a regulatory analysis, etc.) would be undertaken. If the evaluation shows that unnecessary regulatory burden can be reduced, the proposed changes to requirements will most likely be voluntary. In either case, stakeholder input would be obtained in a timely manner.

Dated at Rockville, Maryland, this 3rd day of May, 2000.

**Charles E. Rossi,**

*Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. 00-11535 Filed 5-8-00; 8:45 am]

**BILLING CODE 7590-01-P**

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 611

RIN 3052-AC00

#### Organization; Stockholder Vote on Like Lending Authority

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** We propose new regulations to carry out territorial consent requirements of the Farm Credit Act of 1971, as amended (Act).<sup>1</sup> Section 5.17 of the Act allows Farm Credit System (FCS or System) stockholders in certain areas of the country to vote on charters involving like lending authorities. The charter amendments would provide eligible customers the opportunity to obtain lending services from more than one association.

**DATES:** Please send your comments to us by June 8, 2000.

**ADDRESSES:** You may send comments by electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or fax them to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

#### FOR FURTHER INFORMATION CONTACT:

Eric Howard, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Joy Strickland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

We are committed to removing territorial restrictions that prevent customers of the FCS from choosing their System lender. Recently, we announced that direct lender associations may apply for national (also referred to as nationwide) charters. In order to facilitate national charters, stockholder votes must be conducted by certain associations in Alabama, Louisiana, Mississippi, and New

Mexico. Our objectives for the proposed rule are to:

- Implement the stockholder approvals required by statute; and
- Ensure stockholders are adequately informed and votes are conducted quickly and fairly.

##### II. Background

###### A. FCA Initiative

On July 14, 1998, the Farm Credit Administration (FCA or Agency) Board issued a Philosophy Statement on Competition (Philosophy Statement). The Philosophy Statement described the FCA Board's framework for the Agency's chartering, policy development, and regulatory activities involving System corporate structures and related statutory authorities. The FCA Board believes removing the geographical constraints of System entities will promote greater efficiency, improve customer service, and ensure that they continue to meet the current and future needs of rural America. To carry out our philosophy, we researched strategies that conform to the Act and increase opportunities for rural and agricultural borrowers. Based on this analysis, our first priority is to remove geographic barriers by granting national charters to FCS direct lender associations.

We will accept applications from institutions for charter amendments. To facilitate the application process, we will be furnishing additional guidance to FCS institutions in the near future.

We note that the proposed voting requirements only apply to the geographic areas specifically referenced in the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 amendments).<sup>2</sup> Thus, they do not apply to nationwide charter requests outside of the areas covered by the 1992 amendments or any other FCA chartering actions not related to national charters.

###### B. Statutory Requirements for Stockholder Votes

Before we can grant full nationwide charters, we must fulfill two requirements of the Act affecting certain institutions in four states. In the 1992 amendments, Congress required stockholder voting on competitive charters in these areas.

The 1992 amendments require association stockholder votes in the geographic area in which the Federal Intermediate Credit Bank of Jackson or its successor (AgFirst Farm Credit Bank) is chartered to provide short-and

<sup>1</sup>Pub. L. 92-181, 85 Stat. 583 (Dec. 10, 1971).

<sup>2</sup>Pub. L. 102-552, 106 Stat. 4102 (Oct. 28, 1992).

intermediate-term credit and the Farm Credit Bank of Texas is chartered to provide long-term credit. The 1992 amendments also require the consent of stockholders of three production credit associations (PCAs) in New Mexico that were reassigned pursuant to section 433 of the Agricultural Credit Act of 1987.<sup>3</sup>

*C. Statutory Requirements for Bank and Certain New Mexico Association Boards of Directors Votes*

In addition to a stockholder vote by each of the covered associations, the 1992 amendments require the approval of the board of directors of their affiliated banks. Thus, the boards of directors of the Farm Credit Bank of Texas, AgFirst Farm Credit Bank, and the Farm Credit Bank of Wichita must vote to approve the issuance of competitive charters or charter amendments in certain areas. The 1992 amendments also require the approval of the board of directors of the New Mexico PCAs that were reassigned.

### III. The Proposed Regulations

We are proposing regulations to carry out the statutory requirement for stockholder approvals. In addition, we believe the stockholders of the covered associations should have the opportunity to express their views on the issue of other institutions being able to lend in these geographic areas.

We have two primary objectives in setting up this approval process. The FCA Board believes an expedited process will be least burdensome to the stockholders and institutions involved and will best promote the implementation of the Philosophy Statement. We chose not to propose an alternative for implementing the statutory requirement. This alternative would have required the stockholders in the geographic areas covered by the 1992 amendments to vote on each nationwide charter application we receive. We believe that requiring multiple votes would be both costly and disruptive to the stockholders of the associations covered by the 1992 amendments.

Our other primary objective is to ensure that the process provides stockholders with full and fair disclosure on the issue of charter amendments affecting the territory of associations where they do business. The discussion that follows explains each section of the proposal.

*A. Section 611.1150—Definitions Used in the Proposed Regulations*

We provide definitions of four key terms in the proposed regulations. As

part of our goal to use plain language in our regulations, we use the word “you” in the text of the proposed rule. We also use the term “covered association,” which means the associations subject to section 5.17(a)(2)(B), (a)(2)(C), (a)(13), and (a)(14), specifically: First South Production Credit Association; Louisiana Federal Land Bank Association, FLCA; Federal Land Bank Association of North Alabama, FLCA; Federal Land Bank Association of South Alabama, FLCA; Federal Land Bank Association of North Mississippi, FLCA; FLBA of South Mississippi; Production Credit Association of Southern New Mexico; Production Credit Association of Eastern New Mexico; and the Production Credit Association of New Mexico.

We define the term “days” to mean calendar days unless otherwise specified. We also define “we” or “us” to mean the FCA.

*B. Section 611.1151—What Stockholders Must Decide*

The proposed rule requires the covered associations to call a vote of their stockholders to decide the following question:

Do you want a choice to borrow from other Farm Credit System associations?

If stockholders vote to approve the question, they will have the opportunity to borrow from other System associations that will be chartered to lend in their current association’s lending area. They will also continue to have the opportunity to borrow from their current association. Voting against the question means other System associations will not be chartered to lend in their current association’s lending area. However, the stockholders will be able to continue to borrow from their current association.

The FCA has several options for carrying out the requirements of section 5.17. For example, the stockholders in the areas covered by the 1992 amendments could vote on each request for a nationwide charter in those areas. There are currently 165 direct lender associations within the System. We expect requests for nationwide charters from most of these associations. As a result, we believe separate stockholder votes for each request for nationwide charters would be expensive and disruptive to the individual stockholders and the covered associations. To reduce this burden, we are proposing a streamlined process for obtaining stockholder approval on this issue. Thus, the stockholders of each covered association will vote on whether *any* other Farm Credit association should be given a charter or

charter amendment that would allow it to exercise lending authority in the territory of the covered association.

*C. Section 611.1152—Bank and Certain New Mexico Association Boards of Directors Voting Requirements*

The proposed regulations implement the approval requirements for bank and certain New Mexico association boards of directors’ votes. The approval requirements differ depending on the geographic area of the charter amendment. For the former Jackson district, the 1992 amendments require the approval of the board of directors of the Farm Credit Bank of Texas and AgFirst Farm Credit Bank.<sup>4</sup>

For the reassignments under section 433 of the Act, the 1992 amendments require the approval of the board of directors of the Farm Credit Bank of Texas and the Farm Credit Bank of Wichita.<sup>5</sup> In addition to the stockholders’ and bank boards of directors’ votes, the New Mexico associations that were reassigned pursuant to section 433 must conduct a vote of their boards of directors.

The banks’ and certain New Mexico associations’ boards of directors will vote on the following question:

Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory(ies) now served by [list affected association(s)]?

Our proposal requires these votes to be completed and the results reported to the FCA on the first business day following notice by an independent third party as described in section F below.

*D. Section 611.1153—Contents of the Information Statement*

The proposed rule identifies the information necessary to ensure stockholders receive complete disclosure to enable them to make an informed decision when voting on the stockholder question. The Information Statement must contain the following:

- Notice of Meeting;
- Proxy Ballot and Instructions;

<sup>4</sup> Under section 5.17(a)(20)(b), for each of the covered associations, only its affiliated bank board of directors will vote on the question in proposed § 611.1152(c).

<sup>5</sup> Under section 5.17(a)(13) and (14), for each of the covered associations, both the Farm Credit Bank of Texas and the Farm Credit Bank of Wichita will vote on the question in proposed § 611.1152(c).

<sup>3</sup> Pub. L. 100–233, 101 Stat. 1568 (Jan. 6, 1988).

- Brief Summary of the Question;
- Discussion of the Advantages and Disadvantages of Approving the Question;

- Association Board Statement or Recommendation (Optional); and,
- Statement by the Farm Credit Administration Board.

The Notice of Meeting (Notice) must give the date, time, and place of the stockholders' meeting. The Notice must include the question that will be considered and voted on by the stockholders. It must identify the requirements for stockholder approval, pursuant to proposed § 611.1157. It must also contain a reference to the proxy, proxy authorization, voting instructions included in the Information Statement, and the deadline for receipt of the proxy at the headquarters office. The Information Statement must be provided to all equity holders, including preferred stockholders, participation certificate holders, and others not eligible to vote. Although these non-voting equity holders cannot vote on the question, we are proposing to provide them with the Information Statement to keep them informed of the changes affecting their Association.

The proposed rule contains customary instructions for voting by proxy. The proxy ballot and instructions must allow stockholders to select someone other than a director to serve as proxy, provided that this person is a voting stockholder and will attend the meeting. The proxy ballot and instructions must point out that a stockholder may cancel the proxy at any time prior to balloting at the stockholders' meeting. The documents must provide a space for the stockholder to sign and date the proxy authorization. The proxy ballot must be separate from the proxy authorization to ensure the stockholder's rights to a secret ballot as required by section 4.20 of the Act. Therefore, you must ensure that there are no signatures on the ballot.

The Information Statement must include a brief summary of the question. The summary must provide background information on the FCA Board's Philosophy Statement. The summary must also include information on the territory currently served by the covered association. Finally, the summary must describe the question approval process.

The Information Statement must also include a discussion of the advantages and disadvantages of approving the question to the stockholders of the covered association. The discussion must present a balanced view of the advantages and disadvantages and provide justification for all statements that project future financial results, such

as changes in operating costs, stock retirements, interest rates, earnings, and services available to customers.<sup>6</sup>

The boards of directors of the covered associations may include an optional statement on the question. This statement may include the directors' views and recommendation on the question and the reasons for the recommendation.

To further streamline the process, the FCA is including a model Information Statement with this proposal. We note, however, that although most of the requirements in the proposed rule are standard in stockholder disclosures, one item is unique. The FCA Board believes the disclosure should include information on its philosophy on competition to ensure that the stockholders can make an informed vote.

#### *E. Section 611.1154—Timeframes for Implementing the Regulations*

We are proposing a streamlined, fast-track process for implementing the rule. As previously discussed, we expect many requests for nationwide charters in the near future. The FCA Board believes the timely and efficient implementation of the Philosophy Statement and nationwide charters has the potential for lowering the cost of credit and improving service for customers. Thus, we are proposing a specific timeline for obtaining stockholder decisions on the question.

The first step in the timeline is preparing the Information Statement. The covered associations must prepare and send the Information Statement to the FCA within 20 days of the effective date of this rule. We are requiring submission by facsimile, electronic transmission, overnight mail, or similar expedited delivery method so we can review and approve the statement in the most efficient manner. In addition, FCA's model Information Statement should shorten the time necessary for the associations to prepare the document. We also note that after the FCA Board adopts the final regulations, we send them to Congress for a 30-day review period before they are effective. As a result, the associations will have at least 50 days after we adopt the rule to submit the Information Statement. We are proposing a 10-business day review period for the FCA, but plan to act on the Information Statements as quickly as possible. To ensure that the Information

Statement provides accurate and complete information to stockholders on the question, we may change the Information Statement or require the association to change it.

When the associations receive FCA approval, they will have 14 days to duplicate and mail the statement. The proposal requires that the association hold a stockholder meeting 16 days after distribution of the statement. This includes the standard 5-day mailing time and 10 days for stockholder review. As a result, the stockholder meeting will take place on the first business day following the 10-day stockholder review period.

#### *F. Sections 611.1155 and 611.1156—Vote Tabulation and Notification*

The proposed regulations require that the stockholder votes be tabulated by an independent third party within 2 business days of the meeting. Use of an independent third party is a standard measure to ensure accuracy and objectivity. The independent third party must notify the association, the appropriate banks, and the FCA of the results of the vote on the same day they are tabulated.<sup>7</sup> Within 10 days, the independent third party will provide us a certified copy of the stockholders' vote on the question.

#### *G. Sections 611.1157, 611.1158, 611.1159 and 611.1160—Miscellaneous Issues*

For all the required votes, the proposed regulations incorporate the standard condition for approval or disapproval of the question by a majority of those stockholders and board members voting, at duly authorized meetings, according to the bylaws of the institution.

The proposal also requires the associations to notify the stockholders of the results of the votes referenced in §§ 611.1151 and 611.1152 within 10 days of the stockholder meeting. In order for the associations to do this, we are requiring the banks' boards of directors to notify the associations of their votes within 2 business days.

The proposed regulations contain the following prohibition: No director, officer, employee, or agent of a bank or an association may make any representation that appears to be a statement or recommendation of the FCA on the merits of the question. The FCA's position will be included in the Information Statement as required in proposed § 611.1153(a)(6).

<sup>6</sup> Any financial projections must conform to the guidance provided in Bookletter BL-007 entitled "Disclosure of Financial Forecasts" dated March 2, 1990. Partial forecasts or projected information will be subject to the evaluative criteria set forth in this Bookletter.

<sup>7</sup> When the association contracts with an independent third party, the association must instruct it as to which bank(s) must be notified of the results of the stockholder vote.

Finally, in the event the stockholders' and boards of directors' votes identified in proposed §§ 611.1151 and 611.1152, are not conducted, the proposed regulations provide that FCA will conduct the voting process.

#### List of Subjects in 12 CFR Part 611

Accounting, Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, we propose to amend part 611 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

#### PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

**Authority:** Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Add subpart J to read as follows:

#### Subpart J—Stockholder Vote on Like Lending Authority

Sec.

- 611.1150 What definitions are used in this subpart?  
 611.1151 What must your stockholders decide?  
 611.1152 What votes must be conducted by bank and certain association boards of directors?  
 611.1153 What must the Information Statement contain?  
 611.1154 What is the timeframe for this vote?  
 611.1155 How are the votes tabulated?  
 611.1156 Who is notified of the results of the stockholder vote?  
 611.1157 How many votes are needed for passage of the questions?  
 611.1158 What notifications must be made?  
 611.1159 Are there additional requirements?  
 611.1160 What if the votes are not conducted?  
 Appendix A to Subpart J—Model Information Statement

#### Subpart J—Stockholder Vote on Like Lending Authority

##### § 611.1150 What definitions are used in this subpart?

(a) *Days* means calendar days unless otherwise noted.

(b) *You or covered associations* means the associations subject to section 5.17(a)(2)(B), (a)(2)(C), (a)(13) and (a)(14) of the Farm Credit Act of 1971, as amended, specifically First South Production Credit Association; Louisiana Federal Land Bank Association, FLCA; Federal Land Bank

Association of North Alabama, FLCA; Federal Land Bank Association of South Alabama, FLCA; Federal Land Bank Association of North Mississippi, FLCA; FLBA of South Mississippi; Production Credit Association of Southern New Mexico; Production Credit Association of Eastern New Mexico; and the Production Credit Association of New Mexico.

(c) *We or us* means the Farm Credit Administration.

##### § 611.1151 What must your stockholders decide?

(a) You must conduct a vote of your voting stockholders, voting in person or by proxy, at a duly authorized meeting, on this question:

Do you want a choice to borrow from other Farm Credit System associations?

(b) Before the vote on the question, you must prepare an Information Statement, obtain Farm Credit Administration approval of it, and distribute it to your stockholders.

##### § 611.1152 What votes must be conducted by bank and certain association boards of directors?

(a) On the first business day following the notice from the independent third party required by § 611.1156(a), the board of directors of the Farm Credit Bank of Texas, AgFirst Farm Credit Bank, and the Farm Credit Bank of Wichita must vote on the question in paragraph (c) of this section and report the results to us.

(b) On the first business day following the notice from the independent third party required by § 611.1156(a), the boards of directors of Production Credit Association of Southern New Mexico, Production Credit Association of Eastern New Mexico, and the Production Credit Association of New Mexico must vote on the question in paragraph (c) of this section and report the results to us.

(c) The boards of directors listed in paragraphs (a) and (b) of this section, voting at duly authorized meetings, must vote on the following question:

*Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory(ies) now served by [list affected association(s)]?*

##### § 611.1153 What must the Information Statement contain?

(a) The Information Statement must include the question in § 611.1151(a) and must substantially conform to the model Information Statement provided as an appendix to this subpart. The Information Statement must include a:

- (1) Notice of meeting;
- (2) Proxy ballot and instructions;
- (3) Brief summary of the question;
- (4) Discussion of the advantages and disadvantages of approving the question;
- (5) Association board statement or recommendation (optional); and
- (6) Statement by the Farm Credit Administration Board.

(b) We may also require additional information in the Information Statement to ensure stockholders have accurate and adequate information.

##### § 611.1154 What is the timeframe for this vote?

(a) Within 20 days of the effective date of this section, you must prepare and send the Information Statement to us by facsimile, electronic transmission, overnight mail, or similar expedited delivery method.

(b) Not later than 10 business days after receipt of the Information Statement, we will review the Information Statement and notify you of our approval or denial. We may change the Information Statement or require you to change it to ensure that it provides accurate and complete information to stockholders on the question.

(c) Within 14 days of receipt of our approval of the Information Statement, you must mail the Information Statement to your voting stockholders.

(d) A 10-day stockholder review period will begin on the sixth day after the day you mail the Information Statement.

(e) A meeting of the stockholders must take place on the first business day following the end of the 10-day stockholder review period.

##### § 611.1155 How are the votes tabulated?

The votes will be tabulated by an independent third party within 2 business days of the stockholder meeting.

##### § 611.1156 Who is notified of the results of the stockholder vote?

(a) On the day the votes are tabulated, the independent third party must report the results to you, the appropriate bank(s), and us.

(b) Within 10 days of the stockholder meeting, the independent third party must provide the Farm Credit Administration with a certified copy of the stockholders' vote on the question.

##### § 611.1157 How many votes are needed for passage of the questions?

The votes in §§ 611.1151 and 611.1152 will be determined by the majority of those voting, in person or by proxy as appropriate, at a duly

authorized meeting in accordance with the associations' or banks' quorum requirements.

**§ 611.1158 What notifications must be made?**

(a) You must notify the stockholders of the results of the votes referenced in §§ 611.1151 and 611.1152 within 10 business days.

(b) The board of directors of the Farm Credit Bank of Texas and the AgFirst Farm Credit Bank must notify each of the covered associations with which they have a funding relationship of the results of the vote in § 611.1152(a) within 2 business days.

(c) The board of directors of the Farm Credit Bank of Texas and the Farm Credit Bank of Wichita must notify the Production Credit Association of Southern New Mexico, the Production Credit Association of Eastern New Mexico, and the Production Credit Association of New Mexico of the results of the vote in § 611.1152(a) within 2 business days.

**§ 611.1159 Are there additional requirements?**

No director, officer, employee, or agent of a bank or an association may make any representation that appears to be a statement or recommendation of the Farm Credit Administration on the merits of the question. The Farm Credit Administration's position will be included in the Information Statement.

**§ 611.1160 What if the votes are not conducted?**

In the event the stockholder and boards of directors votes identified in §§ 611.1151 and 611.1152, are not conducted in accordance with this subpart, the Farm Credit Administration will conduct the voting process.

**Appendix A to Subpart J—Model Information Statement**

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**Note:** Appendix A contains a model information statement to aid in compliance with subpart J of part 611.

*A-1—Notice of Stockholders' Meeting of X Association*

A meeting of the stockholders of X Association will be held at (location) located at (address), on (date), beginning at (time).

At this meeting, you will be asked to vote on the following question:

Do you want a choice to borrow from other Farm Credit System associations?

The Farm Credit Administration (FCA) Board will accept applications from direct lender associations for national (also referred to as nationwide) charters. National charters would enable other Farm Credit System (System) lenders to make loans in the territory now served by your Association. As a result, you could have greater choice of System lenders in your area.

The Farm Credit Act of 1971, as amended (Act), requires approval by the voting stockholders of your Association before the FCA can issue a charter or amend a charter that would allow any System lender to make loans, of the same type as those that your Association can make, in the geographic territory now served by your Association. For the question to be approved, a majority of the voting stockholders of X Association voting, in person or by proxy, at a duly authorized meeting of such stockholders, must vote to approve the question. The Act requires other approvals before nationwide charters can be issued in the territory served by X Association. The approvals are explained in the brief summary of the question (Appendix A-5).

Attached is a packet of information related to the question. The packet includes a brief summary of the question; advantages/disadvantages of allowing other System associations to exercise lending authority for eligible customer in the geographic territory; a Board of Directors' Statement (optional); and a statement by the FCA Board.

Information on balloting and proxies is included under Appendix A-2, including the deadline of (date) for receipt of the proxy forms by your Association. If you have any questions about the Information Statement or the question, you may discuss them at the stockholders' meeting on (date). Your board of directors urges you to vote in person or by proxy at the stockholders' meeting.

If you are a nonvoting stockholder or holder of participation certificates, you cannot vote on the question. However, we sent you this Information Statement to keep you informed of the changes affecting your Association.

Name, Chief Executive Officer  
Enclosures

*A-2—Proxy Instructions and Ballot*

If you are entitled to vote and are unable to attend the meeting in person, you may appoint a proxy to vote as you direct. The following are instructions for completing the Proxy Ballot and Proxy Form:

1. Complete the Proxy Ballot.
  - a. Mark either "APPROVE" or "DISAPPROVE" in the appropriate box on the Ballot. *Unmarked Proxy Ballots will be voted to approve the question.*
  - b. Enclose Proxy Ballot in the Ballot Envelope provided. Seal the envelope.

2. Complete the Proxy Form.

a. If you prefer, you may name as your proxy someone other than the directors named on the Proxy Form by writing in the name of the person in the blank space provided. Please note that for your vote to count, the person you name as proxy must be a voting stockholder of the association and must be present at the stockholders' meeting.

b. Date and sign the Proxy Form in the space indicated.

3. Enclose your signed and dated Proxy Form and sealed Ballot Envelope in the business reply envelope provided. Mail to your Association in the pre-addressed return envelope provided.

*For your vote to count, your Proxy Ballot and Proxy Form must be received in the association office no later than (time) on (date) or delivered to an election official prior to balloting at the stockholders' meeting.* You have the right to cancel your proxy at any time prior to the beginning of balloting at the stockholders' meeting.

*A-3—Proxy Form*

I, \_\_\_\_\_, as holder of stock and authorized to vote such stock in X Association, cancel any previous proxies and appoint (Name), Director, X Association, as my proxy, or I appoint \_\_\_\_\_, as my proxy to attend the association stockholders' meeting on (date), and any continuation or adjournment of the meeting, to vote for me on the question, and to act for me with the same effect as if I were personally present.

I understand that I may cancel this proxy and the authority it represents at any time prior to balloting at the stockholders' meeting. Unless cancelled, this proxy will expire upon the official announcement of the results of the vote on the question. I also understand that, if necessary, the person I name as my proxy can substitute someone else as my proxy and can later cancel that substitution.

Date:

Signature\*

Representative Title\*\*

*A-4—Ballot (For Use as Proxy Ballot or Voting in Person) X Association*

QUESTION: Do you want a choice to borrow from other Farm Credit System associations?

I direct that my Ballot be voted as follows:  
APPROVE (Voting to approve means you will have the opportunity to borrow from:

- Your current association; and
- Other Farm Credit System associations that will be chartered to allow them to lend in your current association's lending area, as explained in the enclosed Information Statement.)

\* Please sign exactly as your name appears on the above label.

\*\* When signing as an executor, administrator, trustee, or guardian on behalf of a corporation or partnership, please sign your name on the first line and indicate your full representative title on the second line.

DISAPPROVE (Voting against means other Farm Credit System associations will not be chartered to allow them to lend in your current association's lending area. However, you will be able to continue to borrow from your current association, as explained in the enclosed Information Statement.)

*If I do not direct how this ballot shall be voted, I intend it to be cast to APPROVE the question.*

**Note:** For your vote to count, your Proxy Ballot and Proxy Form must be received in the association office no later than (time) on (date) or delivered to an election official prior to balloting at the stockholders' meeting. You have the right to cancel your proxy at any time prior to the beginning of balloting at the stockholders' meeting.

#### A-5—Brief Summary of the Question

In a July 14, 1998, Philosophy Statement, the FCA Board expressed its view that competition is beneficial for customers and will help ensure that the System will continue to meet the current and future needs of rural America. To facilitate competition and improve services for all farmers, ranchers, and other eligible customers, the FCA Board indicated its support for several measures including the removal of geographical restrictions of System entities.

The FCA Board will accept applications for national charters from System direct lender associations in the near future. Before the FCA can grant applications for full nationwide charters, however, the Agency must carry out two requirements of the Act that call for stockholder voting in certain areas of the country. Congress required stockholder voting in the geographic area in which the Federal Intermediate Credit Bank of Jackson or its successor (AgFirst Farm Credit Bank) is chartered to provide short- and intermediate-term credit and the Farm Credit Bank of Texas is chartered to provide long-term credit. Congress also required the consent of stockholders of three production credit associations in New Mexico pursuant to section 433 of the Agricultural Credit Act of 1987.

Your association serves the [counties/states of xxx], and (insert either (1) has territory that is within the geographic area of the successor to the former Federal Intermediate Credit Bank of Jackson or (2) reaffiliated under section 433.) As a result, you are being asked whether you approve the FCA's issuance of charters to associations that would allow them to make similar loans to you and other eligible customers in the territory of your Association.

Approval of the question does not, however, guarantee that other associations will be chartered to lend in your Association's territory. Following the stockholder vote on the question, the board of directors of the [insert appropriate bank] [and insert associations if this Information Statement refers to section 5.17 (a)(13) and (a)(14)] will also vote on the question. The question must be approved by a majority of the stockholders voting and a majority of the board of directors of the banks [and associations, if appropriate] before another

System lender may be chartered to make similar loans in the territory of your Association. If approved by all parties involved, the FCA may grant requests from other FCS associations to serve the territory currently served by your Association.

#### A-6—Advantages and Disadvantages of Approving the Question

There are advantages and disadvantages of your approval of the question. The following is a brief discussion of the principal advantages and disadvantages to the stockholders of your Association. This discussion does not claim to provide a complete analysis of all the expected outcomes of approval of the question. In addition, there can be no assurance that any expected advantage or disadvantage below will take place in whole or part. The realization of any advantages and disadvantages depends on how each association implements its nationwide charter. You should also consider that the advantages and disadvantages affect not only you but all other eligible FCS customers and potential customers.

#### ADVANTAGES

Allowing other System associations to make loans in the territory of your Association may provide System customers in the [insert geographic area] with more choices for credit. You may have a greater choice of financial products because System lenders offer different loan products, interest rates, and repayment options. If the question is approved, you may have the freedom to select the System lender of your choice.

Competition for loans within a geographic area may also provide associations the opportunity and incentive to become more efficient and more competitive. This competition is likely to lower the cost of credit and improve the quality of service for you and other customers.

System lenders across the country may be better able to develop niche products and thus offer specialized lending services to customers in the territory of your Association and across the country. You may be able to obtain your main source of operational funding from one lender and specialized services from another. Nationwide charters may also enable System lenders to provide seamless credit to agricultural producers regardless of the producer's geographic location. E-commerce services may be enhanced after territorial restrictions are removed.

Finally, approval of this question may heighten awareness of each System lender's public policy mission for service within its original chartered territory. The FCA will continue to ensure that each System association fulfills its responsibility to make services available to all eligible customers within its current chartered territory.

#### DISADVANTAGES

As System lenders compete for customers, some associations may become less viable if added competitive pressures reduce profit margins. In addition, if the challenges associated with greater competition are not met, the capital investment of stockholders may be at a higher risk. There are 165

associations that may request nationwide charters. As a result, the management of your Association may be under increased pressure to provide efficient and cost effective services.

In the long run, some associations may be forced to cut back or eliminate certain services. Also, associations entering new geographic areas may primarily focus on larger or more profitable borrowers while less attention may be given to the more marginal borrowers in the associations' new and existing chartered territories.

Some associations may not be competitive in their present form and may have to merge or take other corporate restructuring actions to remain viable.

#### A-7—X Association Board Statement (Optional)

The Association board of directors may state its views and recommendation on the question and elaborate on the reasons for its recommendation.

#### A-8—Statement of the FCA Board

This statement will be provided during FCA's review period.

Dated: May 4, 2000.

**Nan P. Mitchem,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 00-11551 Filed 5-8-00; 8:45 am]

BILLING CODE 6705-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-SW-57-AD]

#### **Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A-1, 269B, 269C, 269C-1, 269D, and TH-55A Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD) applicable to Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A-1, 269B, 269C, 269C-1, and 269D helicopters. That AD currently requires inspecting the tail rotor swashplate shaft (shaft) nut for looseness and, if loose, inspecting the shaft for proper size; subsequently inspecting the shafts not previously inspected; and replacing any undersized shaft prior to further flight. This new action would reduce the applicability by specifying certain serial number tail rotor pitch control (pitch control) assemblies and shipping dates but would add the Schweizer Model TH-

55A helicopter to the applicability. This proposal is prompted by the discovery of an undersized replacement shaft during routine maintenance. The actions specified by this proposed AD are intended to prevent failure of the shaft, loss of the tail rotor, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before July 10, 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-57-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

George J. Duckett, Aviation Safety Engineer, New York Aircraft Certification Office, FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581, telephone (516) 256-7525, fax (516) 568-2716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket No. 99-SW-57-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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-57-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

The FAA issued AD 99-17-10, Amendment 39-11258, on August 4, 1999 (64 FR 44823, August 18, 1999), to require inspecting the shaft nut for looseness and, if loose, inspecting the shaft, part number (P/N) 269A6049-3, for proper size; subsequently inspecting the shafts not previously inspected; and replacing any undersized shaft prior to further flight. That action was prompted by the discovery of an undersized replacement shaft during routine maintenance. The requirements of that AD are intended to prevent failure of the shaft and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the TH-55A model helicopter could have an undersized shaft installed and should have been included in the applicability of AD 99-17-10. Additionally, we have received reports of undersized shafts shipped from the factory as spares between September 1 and December 1, 1998. This action requires inspecting each shaft nut for looseness and each shaft for improper size, replacing each shaft, as necessary, and adding Schweizer Model TH-55A to the applicability requirements.

The FAA has reviewed Schweizer Service Bulletins B-271.1 for Schweizer Models 269A, 269A-1, 269B, 269C, and TH-55A; C1B-009.1 for the Model 269C-1; and DB-007.1 for the Model 269D, all dated October 14, 1999. These service bulletins describe procedures for inspecting the shaft nut, P/N 269A6258, for looseness by using a firm hand pressure and inspecting the shaft, P/N 269A6049-3, for proper size.

Since an unsafe condition has been identified that is likely to exist or develop on other Schweizer Model 269A, 269A-1, 269B, 269C, 269C-1, 269D and TH-55A helicopters of these same type designs, the proposed AD would supersede AD 99-17-10 to require inspecting the shaft nut, P/N 269A6258, for looseness; inspecting the shaft, P/N 269A6049-3, for proper size; and replacing any undersized shaft with an airworthy shaft of the proper size for

helicopters with equipment installed as follows:

- Shaft, P/N 269A6049-3, shipped from the factory between September 1 and December 1, 1998, and installed after the helicopter was manufactured, or
- Pitch control assembly, P/N 269A6050-5, with serial number with an "S" prefix and number 1047 through 1061.

The FAA estimates that 28 helicopters would be affected by this AD. For each helicopter, it would take 0.25 work hour to accomplish the 10-hour inspection and 3.6 work hours to accomplish the inspection and replacement, if necessary, at the 100-hour or annual inspection interval. The average labor rate is \$60 per work hour. Required parts would cost approximately \$1400 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$45,668.

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, 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 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 proposed action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-11258 and by adding a new airworthiness directive to read as follows:

**Schweizer Aircraft Corporation:** Docket No. 99-SW-57-AD. Supersedes AD 99-17-10, Amendment 39-11258, Docket No. 99-SW-31-AD.

**Applicability:** Model 269A, 269A-1, 269B, 269C, 269C-1, 269D and TH-55A helicopters, with a tail rotor washplate shaft (shaft), part number (P/N) 269A6049-3, or a tail rotor pitch control assembly (pitch control), P/N 269A6050-5, with a serial number (S/N) with an "S" prefix and number 1047 through 1061, 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 failure of the shaft, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS);

(1) Determine whether the factory-installed shaft, part number (P/N) 269A6049-3, has been replaced with a shaft shipped from the factory between September 1 and December 1, 1998, inclusive, or if a pitch control, P/N 269A6050-5, with a S/N with an "S" prefix and numbers 1047 through 1061 is installed.

(2) If the factory ship date for a replacement shaft cannot be positively determined, if the shipping date was between September 1 and December 1, 1998, inclusive, or if the pitch control S/N has an "S" prefix and number 1047 through 1061,

(i) Before further flight and thereafter at intervals not to exceed 10 hours TIS, accomplish "Procedure, Part I," of Schweizer Service Bulletins B-271.1 for Models 269A, 269A-1, 269B, 269C and TH-55A helicopters; C1B-009.1 for the Model 269C-1, or DB-007.1 for the Model 269D, all dated October 14, 1999 (SB), as applicable.

(ii) At the next scheduled 100-hour or annual inspection, whichever occurs first, accomplish Part II, paragraphs a. through d., of the applicable SB. Shafts not meeting the requirements of paragraph d. of the applicable SB must be replaced with an airworthy shaft prior to further flight.

(b) Before installing a replacement shaft, determine the date the shaft was shipped from the factory. If the date was between September 1 and December 1, 1998,

inclusive, or cannot be determined, accomplish the inspections required by Part II, paragraph d., of the applicable SB prior to installation. Replace any unairworthy shaft with an airworthy shaft.

(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, New York Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

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

Issued in Fort Worth, Texas, on April 28, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.*

[FR Doc. 00-11523 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 99-SW-42-AD]

#### Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD) applicable to BHTC Model 430 helicopters. That AD requires inspecting all four main rotor adapter assemblies for evidence of flapping and lead-lag contact. That AD also requires installing a never-exceed-velocity (VNE) placard with markings on the airspeed indicator glass and instrument case and a revision to the rotorcraft flight manual (RFM) to reflect the airspeed revision. This action would provide mandatory terminating action for requirements of that AD by replacing the fluidlastic damper blade sets with improved sets that incorporate a pressure indicator to detect loss of damper fluid. This proposal is prompted by the need for a positive

means of detecting loss of damper fluid that could result in main rotor tip path plane separation. The actions specified by the proposed AD are intended to prevent increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before July 10, 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-42-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222-5122, fax (817) 222-5961.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-SW-42-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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-42-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

### Discussion

On September 26, 1997, the FAA issued AD No. 97-15-16, Amendment 39-10152 (62 FR 52653, October 9, 1997). That AD requires inspecting the BHTC Model 430 helicopter main rotor adapter assemblies for evidence of flapping and lead-lag contact. That AD also requires installing a VNE placard, with markings to reflect the airspeed restriction, and inserting revisions to the RFM to reflect the airspeed revisions. That action was prompted by a report of a main rotor tip path plane separation, which occurred during a ferry flight at airspeed of more than 140 knots indicated airspeed. The requirements of that AD are intended to prevent tip path plane separation, increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises that a main rotor tip path plane separation on a Model 430 helicopter was caused by the limited damping characteristics of the elastomeric lead-lag dampers.

Since the issuance of AD 97-15-16, BHTC has issued Alert Service Bulletin (ASB) 430-97-4, dated December 14, 1997, and ASB 430-98-8, dated December 31, 1998, that provide for replacing the fluidlastic damper blade sets with improved sets, part number (P/N) 430-310-104-105. The improved fluidlastic damper blade sets incorporate a pressure indicator to provide a positive means of leak detection, thereby replacing the requirements of ASB 430-97-2, dated July 11, 1997, and ASB 430-97-4, dated December 19, 1997.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design, the proposed AD would maintain the same requirements as AD 97-15-16 until an improved fluidlastic damper blade set, P/N 430-310-104-105, is installed that incorporates a pressure indicator to detect loss of damper fluid.

The FAA estimates that 7 helicopters of U.S. registry would be affected by this proposed AD, that it would take

approximately 11 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. The required parts would cost approximately \$122,945 per set of 4. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$865,235 to replace the damper blade sets in the entire fleet.

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 removing Amendment 39-10152 (62 FR 52653, October 9, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Bell Helicopter Textron Canada:** Docket No. 99-SW-42-AD. Supersedes AD 97-15-16, Amendment 39-10152, Docket 97-SW-24-AD.

**Applicability:** Model 430 helicopters, 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 (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 tip path plane separation, increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect all four main rotor adapter assemblies for flapping contact between the adapter liners and the upper stop assembly plugs. Refer to Figures 1, 2, and 3 of the Accomplishment Instructions of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin (ASB) No. 430-97-2, dated July 11, 1997. Flapping contact is indicated by the scrubbing (or smudging) of the adapter liner surface, characteristic of relative motion between the surfaces of the adapter lines and upper stop assembly plugs.

(2) Inspect all four main rotor adapter assemblies for lead-lag contact between the adapter pads and the yoke assembly. Refer to Figures 1 and 2 of the Accomplishment Instructions of BHTC ASB No. 430-97-2, dated July 11, 1997. Lead-lag contact is indicated by a permanent indentation or split in the surface of the adapter pads.

(3) If the inspections in paragraphs (a)(1) or (a)(2) of this AD reveal that there has been contact, inspect and replace the main rotor yoke and stop assemblies in accordance with Part I, No. 3 of the Accomplishment Instructions of BHTC ASB No. 430-97-2, dated July 11, 1997, except return of any damaged upper stops to the manufacturer is not required.

(4) For helicopters with skid landing gear or retractable landing gear, remove the existing never-exceed-velocity (VNE) placard from the overhead console and install VNE placard, P/N 430-075-208-107, or P/N 430-075-208-109, as applicable, in accordance with Part II, of the Accomplishment Instructions of BHTC ASB No. 430-97-2, dated July 11, 1997.

(5) Install on each airspeed indicator a red arc between 120 knots and 150 knots to indicate that airspeeds above 120 knots indicated airspeed are prohibited. Install a slippage mark on each airspeed indicator glass and instrument case.

(6) Insert the temporary revisions, BHT-430-FM-1 and BHT-430-FMS-1, as appropriate, both dated July 7, 1997, into the rotorcraft flight manual.

(b) Within 100 hours time-in-service, (1) Remove the fluidlastic damper blade set, P/N 430-310-100-101 or 430-310-107-101 in accordance with the Accomplishment

Instructions of ASB 430-97-4, dated December 19, 1997, Part 1, steps 1 through 5, and install damper blade set, P/N 430-310-104-105, in accordance with the Accomplishment Instructions, Part I, of BHTC ASB 430-98-8, dated December 31, 1998.

(2) Return pilot and copilot airspeed indicators to their original configuration by removing the markings specified by paragraph (a)(5) of this AD.

(3) Remove the temporary revisions, BHT 430-FM-1 or BHT-430-FMS-1, as appropriate, both dated July 7, 1997. Insert the temporary revisions, BHT-430-FM-1, or BHT-430-FMS-1, as appropriate, both dated December 11, 1998, into the rotorcraft flight manual.

(c) If paragraph (b)(1) was previously accomplished by installation of fluidlastic damper blade set, P/N 430-310-104-103, remove fluidlastic damper blade set, P/N 430-310-104-103, and install fluidlastic damper blade set, P/N 430-310-104-105, in accordance with the Accomplishment Instructions of BHTC ASB 430-98-8, dated December 31, 1998.

(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, Regulations Group, FAA, Rotorcraft Directorate, FAA. 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.

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

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF-97-23R1, dated March 30, 1999.

Issued in Fort Worth, Texas, on April 28, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate,  
Aircraft Certification Service.*

[FR Doc. 00-11522 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 00-ASO-17]

#### Proposed Amendment of Class E Airspace; Fort Payne, AL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Fort Payne, AL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Dekalb Medical Center, Fort Payne, AL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Fort Payne, AL, to the southwest, in order to include the point in space approach serving Dekalb Medical Center.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00-ASO-17, 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) 305-5627.

**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) 305-5627.

**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. 00-ASO-17." 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 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 E airspace at Fort Payne, AL. A GPS SIAP, helicopter point in space approach, has been developed for Dekalb Medical Center, Fort Payne, AL. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 171.1 The Class E airspace designation 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 Administrative Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 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.*

\* \* \* \* \*

##### **ASO AL E5 Fort Payne, AL [Revised]**

Fort Payne, Isbell Field Airport, AL

Lat. 34°28'22" N, long. 85°43'20" W

Fort Payne, NDB

Lat. 34°31'16" N, long. 85°40'24" W

Dekalb Medical Center

Point In Space Coordinates

Lat. 34°26'57" N, long. 85°44'45" W

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Isbell Field Airport and within 8.3 miles northwest and 4.3 miles southeast of the Fort Payne NDB 040° bearing, extending from the NDB to 16 miles northeast of the NDB and that airspace within 6-mile radius of the point in space (lat. 34°26'57" N, long. 85°44'45" W) serving Dekalb Medical Center.

\* \* \* \* \*

Issued in College Park, Georgia, on April 27, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11574 Filed 5–8–00; 8:45 am]

**BILLING CODE 4910–13–M**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

**[Airspace Docket No. 00–ASO–16]**

#### **Proposed Amendment of Class E Airspace; Jasper, TN**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Jasper, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for North Jackson Hospital, Bridgeport, AL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Jasper, TN, to the southwest, in order to include the point in space approach serving North Jackson Hospital.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–16, 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) 305–5627.

**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) 305–5627.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting each 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. 00–ASO–16.” 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 such 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 E airspace at Jasper, TN. A GPS SIAP, helicopter point in space approach, has been developed for North Jackson Hospital, Bridgeport, AL. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 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 E airspace designation 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

##### ASO TN E5 Jasper, TN [Revised]

Jasper, Mario County—Brown Field Airport, TN

Lat. 35°03'37" N, long. 85°35'08" W  
North Jackson Hospital, Bridgeport, AL  
Point In Space Coordinates

Lat. 34°55'10" N, long. 85°45'32" W)

That airspace extending upward from 700 feet above the surface within a 12.6-mile radius of Marion County—Brown Field and that airspace within a 6-mile radius of the point in space (lat. 34°55'10" N, long. 85° 45' 32" W) serving North Jackson Hospital, Bridgeport, AL; excluding that airspace within the Chattanooga, TN, Class E airspace area.

\* \* \* \* \*

Issued in College Park, Georgia, on April 28, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division,  
Southern Region.*

[FR Doc. 00–11575 Filed 5–8–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 00–ASO–18]

#### Proposed Amendment of Class E Airspace; Smithville, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Smithville, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Dekalb County Hospital, Smithville, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Smithville, TN, to the southwest, in order to include the point in space approach serving Dekalb County Hospital.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–18; 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) 305–5627.

#### 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) 305–5627/

#### 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. 00–ASO–18." 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 malign list for future NPRMs should also request a copy of Advisory Circular No. 22–2A 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 E airspace at Smithville, TN. A GPS SIAP, helicopter point in space approach, has been developed for Dekalb County Hospital, Smithville, TN. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 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 E airspace designation 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 "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 smaller titles 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### ASO TN E5 Smithville, TN [Revised]

Smithville Municipal Airport, TN  
Lat. 35°59'07" N, long. 85°48'34" W  
DeKalb County Hospital  
Point in Space Coordinates

Lat. 35°58'17" N, long. 85°49'32" W

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Smithville Municipal Airport and within

a 6-mile radius of the point in space (lat. 35°58'17" N, long. 85°49'32" W serving DeKalb County Hospital; excluding that airspace within the McMinnville, TN, Class E airspace area.

\* \* \* \* \*

Issued in College Park, Georgia, on April 28, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division,  
Southern Region*

[FR Doc. 00–11576 Filed 5–8–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 00–ASO–19]

#### Proposed Amendment of Class E Airspace; Tullahoma, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Tullahoma, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Manchester Medical Center, Manchester, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Tullahoma, TN, to the northeast, in order to include the point in space approach serving Manchester Medical Center.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–19, 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) 305–5627.

**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) 305–5627.

#### 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. 00–ASO–19." 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 E airspace at Tullahoma, TN. A GPS SIAP, helicopter point in space approach, has been developed for Manchester Medical Center, Manchester, TN. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from

700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, an effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### **ASO TN E5 Tullahoma, TN [Revised]**

Tullahoma Regional Airport/Wm Northern Field, TN

Lat. 35°22'52" N, long. 86°14'37" W

Arnold Air Force Base

Lat. 35°23'33"N, long. 86°05'09"W

Winchester Municipal Airport

Lat. 35°10'39" N, long. 86°03'58" W

Manchester Medical Center

Point in Space Coordinates

Lat. 35°29'56" N, long. 86°05'37" W

That airspace extending upward from 700 feet above the surface with a 7-mile radius of Tullahoma Regional Airport/Wm Northern Field Airport and within a 7-mile radius of Arnold Air Force Base and within an 11-mile radius of Winchester Municipal Airport and within a 6-mile radius of the point in space (Lat. 35°29'56" N, long. 86°05'37" W) serving Manchester Medical Center; excluding that airspace within the Shelbyville, TN, Class E airspace area.

\* \* \* \* \*

Issued in College Park, Georgia, on April 28, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11578 Filed 5–8–00; 8:45 am]

**BILLING CODE 4910–13–M**

## **DEPARTMENT OF JUSTICE**

### **Parole Commission**

#### **28 CFR Part 2**

#### **Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code**

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Parole Commission is soliciting public comment on a proposal to revise the guidelines at 28 CFR 2.80 that govern its decisions to grant and deny parole in the case of prisoners serving sentences for felony crimes under the District of Columbia Code. The proposal would translate the current Point Assignment Table at § 2.80 into guideline ranges, and would authorize the setting of presumptive release dates up to 36 months from the date of the parole hearing. The purpose of this proposal is to improve understanding by inmates and the public as to the impact that the guidelines will have in individual cases, and to facilitate successful release planning in advance of parole.

**DATES:** Comments must be received by July 10, 2000.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole

Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

**SUPPLEMENTARY INFORMATION:** The Commission solicits comment on a revision of 28 CFR 2.80 that it believes would make the guidelines for D.C. Code offenders more understandable to inmates and the public, fairer, and easier to administer. The proposal would: (1) Enhance the ability of inmates and the public, including victims of crime, to understand the guidelines and their impact in individual cases by translating the current point score into a guideline range at the initial and subsequent considerations; (2) provide more information to inmates as to their expected release dates by authorizing presumptive release dates up to 36 months from the date of the parole hearing (contingent upon good conduct and development of an adequate release plan); (3) facilitate release planning by setting presumptive release dates up to 36 months from the date of the parole hearing; (4) eliminate anomalies that occur in the current system with respect to penalizing inmates whose rehearings are delayed through no fault of their own or who are encouraged by staff to waive parole consideration until they complete institutional programs; and (5) reduce the maximum time between parole consideration hearings from five years to three years.

#### **Summary of the Proposal**

The proposed revision of § 2.80 would require the following decisionmaking procedure.

Under Step 1A, a Base Guideline Range would be determined from the Base Point Score. There is no change from the Base Point Score used in § 2.80. The Base Point Range (assuming no disciplinary infractions and ordinary program achievement) is simply made explicit.<sup>1</sup>

<sup>1</sup> Multiplying (A) the rehearing range in the current D.C. guidelines by (B) [the Base Point Score minus 3 points] (the number of rehearing required before parole assuming no disciplinary infractions and ordinary program achievement) produces the Base Point Range. For example, an inmate with a Base Point Score of 6 with no disciplinary infractions and ordinary program achievement at each hearing would have two rehearings with a rehearing range of 18–24 months each before the guidelines indicated parole. This translates to a guideline range of the Parole Eligibility Date plus 36–48 months. For most cases, the results under the current and proposed system will be the same.

Continued

Under Step 1B, a disciplinary guideline range is determined. Under Option 1, the current D.C. guideline points (at § 2.80) for disciplinary infractions are used but are translated into explicit ranges.<sup>2</sup> Option 2 presents an alternative approach to measuring the seriousness of disciplinary infractions. Option 1 would maintain the policy of the current guidelines with respect to disciplinary infractions. Option 2 would focus more directly on the seriousness of the disciplinary infraction itself.

Under Step 1C, an outstanding program achievement range is determined. Under Option 1, the current D.C. guideline points for outstanding program achievement are used but translated into explicit ranges that are implicit in the current guidelines.<sup>3</sup> In addition, the guidelines are simplified because the point for ordinary program achievement has already been built into the base guideline range. Option 2 presents an alternative approach to measuring outstanding program achievement. Under Option 2, the guideline range for outstanding program achievement is linked more directly on the number of months of outstanding program achievement.

**Purpose**

The Base Point Guideline Range, Disciplinary Range, and Outstanding Program Achievement Range are combined into a composite or total guideline range at the initial hearing. This would make clear to the inmate the amount of time he or she may expect to serve with continued good conduct and ordinary program achievement. The impact of outstanding program achievement as well as disciplinary infractions would also be made clear. Equally importantly, if release within three years was deemed appropriate by the Commission (as opposed to within 9 months under the current system), the inmate would be given a presumptive parole date (contingent upon continued good behavior and the development of a satisfactory release plan). In the Commission's opinion, presumptive

There are a few differences because the current system lumps together certain dissimilar cases; for example, under the current system, an offender with a base point score of 5 who has outstanding program achievement and no disciplinary infractions will serve the same amount of time as an offender with ordinary program achievement.

<sup>2</sup> Multiplying the number of disciplinary points by the current rehearing range applicable to the current base point score determines this guideline range.

<sup>3</sup> Multiplying the outstanding program achievement point by the current rehearing range applicable to the current base point score determines this guideline range.

release dates allow the inmate to plan better for release and provide a strong incentive for continued good conduct.

Additionally, with presumptive release dates the final review nine months before release (to ensure that the inmate has continued good conduct and consider any additional outstanding program achievement) can be conducted on the record rather than by personal hearing. This is administratively more efficient and reduces the possibility of delay in scheduling the final hearing (e.g., because of the transfer of the inmate between facilities) that may adversely impact the actual release date. Only if serious institutional misconduct is found at this record review would an in-person rehearing be scheduled.

**Invitation for Comment**

Comment is requested both on the overall structure, which would provide the inmate with a projected guideline range at the initial hearing (and at subsequent hearings, as modified by outstanding program achievement or disciplinary infractions) and allow the setting of presumptive release dates up to 36 months away. A record review would be conducted nine months prior to release to ensure that the inmate has continued good conduct and consider any additional outstanding program achievement. If a presumptive release date was not set, the prisoner would be heard no later than each 36 months in contrast to the current rules under which a rehearing may be delayed for up to 60 months.

Comment is specifically requested on whether the Commission, if it adopts the overall structure, should adopt Option 1 or Option 2 for consideration of disciplinary infractions. Option 1 replicates the current DC guidelines. Option 2 would provide results that in some cases would be the same as the current guidelines and in some cases would be different. In general, Option 2 provides results that have more gradations both at the upper and lower ends of the scale and deal with generic behaviors. Option 1 has more limited categories tied to how the conduct is classified by the D.C. Department of Corrections or Bureau of Prisons. Option 1 also weighs the defendant's current and prior record; e.g., if two inmates commit the same disciplinary infraction but one has a higher base point score because of a low salient factor score or current or past violent offense, that inmate will receive a more severe disciplinary guideline range for that infraction (in addition to having received a longer base guideline range in the first place). Under Option 2, the penalties for the same disciplinary

infraction will be the same for the two inmates. Because the inmate with the higher base point score will have the higher base guideline range, that inmate will continue to have a higher total guideline range, but the inmate's current or prior record will not be counted again in determining the time to be added for the disciplinary infraction itself.

Comment is specifically requested on whether the Commission, if it adopts the overall structure, should adopt Option 1 or Option 2 for consideration of outstanding program achievement. Option 1 replicates the current D.C. guidelines. Option 2 would provide results that in some cases would be the same as the current guidelines and in some cases would be different. Under Option 1, inmates with the same base point score (e.g., BPS 6) receive the same credit for outstanding program achievement whether it is based on 100 months (e.g., the time in custody prior to the initial hearing) or 18 months (e.g., the time until the next rehearing). Under Option 2, the credit for outstanding program achievement is tied more directly to the number of months of outstanding program achievement.

**Proposed Implementation**

The proposed revision of 28 CFR 2.80 would be applied prospectively, i.e., to D.C. Code prisoners who receive their initial hearings on or after the effective date of the final rule. If, however, a D.C. Code prisoner who was previously heard under § 2.80 would not be adversely affected by the new guidelines, the new guidelines would be applied retroactively at the prisoner's next scheduled rehearing.

**Outline of Proposed Revised Section 2.80 and Conforming Changes to Other Guidelines**

The proposed alternative to the guideline instructions at 28 CFR 2.80(h) would provide as follows. Both Option 1 and Option 2 are included:

*Step 1. Determine the Base Guideline Range*

A. Determine the Base Point Score (Using the SFS, Current or Prior Violence, and Death)

The Base Guideline Range for the Base Point Score is set forth below:

Base point score	Base guideline range=parole eligibility date (determined by minimum sentence) + —
10 .....	136–172 months.
9 .....	110–140 months.
8 .....	72–96 months.

Base point score	Base guideline range=parole eligibility date (determined by minimum sentence) + —
7 .....	54–72 months.
6 .....	36–48 months.
5 .....	18–24 months.
4 or 3 .....	12–18 months.
2 or less .....	zero months.

The guideline range for the base point score assumes no disciplinary infractions and ordinary program achievement.

**Note:** The Base Point Score is determined exactly the same as under the current guidelines at § 2.80. There is no substantive change.

**B. Determine the Guideline Range for Disciplinary Infractions**

Two options are set forth for comment. Option 1 translates the current D.C. point score into actual guideline ranges without any substantive change. Option 2 uses § 2.36 (the guidelines for disciplinary infractions used in Federal cases).

*Option 1.* Use the Current D.C. Disciplinary Points to determine the guideline range as follows:

Base point score	Type of mis-behavior	Guideline range
10 .....	Aggravated .....	52–64 months
10 .....	Ordinary .....	26–32 months
9 .....	Aggravated .....	44–56 months
9 .....	Ordinary .....	22–28 months
5–8 .....	Aggravated .....	36–48 months
5–8 .....	Ordinary .....	18–24 months
0–4 .....	Aggravated .....	24–36 months
0–4 .....	Ordinary .....	12–24 months

*Option 2.* Determine the guideline range applicable to disciplinary infractions from section 2.36.

**Note:** Option 1 translates the current disciplinary point score into a guideline range without any substantive change. Option 2, in contrast, applies the guideline ranges for disciplinary infractions used in federal cases. The two options will produce different results in different cases. In general, Option 2 focuses more on the conduct underlying the disciplinary infraction and has finer gradations. Option 1 has fewer gradations for the disciplinary conduct and also varies the penalty for disciplinary infractions in part on the original base point score.

**C. Determine the Guideline Range for Outstanding Program Achievement**

Two options are set forth for comment. Option 1 translates the current D.C. outstanding program achievement points into a guideline range without any substantive change. Option 2 uses a formula based on the number months of in custody since the

last consideration (or in the case of the initial hearing, the number of months in confinement).

*Option 1.* The outstanding program achievement guidelines as translated from the current D.C. point score are as follows:

Base point score	Guideline range
0–4 .....	12–18 months
5–8 .....	18–24 months
9 .....	22–28 months
10 .....	26–32 months

*Option 2.* If outstanding program achievement is found, the outstanding program achievement guideline is 25% of the number of months of outstanding program achievement.

- If this calculation results in a fractional month, it will be rounded up to the nearest whole month.
- If outstanding program achievement is found, the offender is ordinarily assumed to have outstanding program achievement for the total time in custody from the last consideration (or from the commitment date in the case of an initial hearing). If, however, the Commission expressly finds outstanding program achievement for only part of the time in custody (e.g., at an initial hearing the inmate has been in custody for 10 years but has shown outstanding program achievement for only 5 years), the Commission may determine the outstanding program achievement guidelines on the actual amount of time with outstanding program achievement.

**Notes:** (1) Option 1 (the current D.C. guidelines) gives the same weight to outstanding program achievement whether over a period of 12 months or over a period of 100 months, and varies the weight according to the offenders base point score. Option 2, in contrast, determines on the number of months of outstanding program achievement credit for each offender directly according to the number of months of outstanding program participation.

(2) The current D.C. guidelines have an additional complexity of treating lack of ordinary program participation as equivalent to a separate disciplinary factor. Under both options of the proposed system, such lack of program participation could be addressed by placement of the decision within the applicable guideline range—or by an upward departure in extreme cases (e.g., a serious offender who refused to participate in a necessary treatment program).

*Step 2. Determine the Total Guideline Range*

At the initial hearing, the total guideline range is: (1) The Base Guideline Range; plus (2) the Disciplinary Guideline Range (if any), minus the outstanding program

achievement range. This is a straightforward arithmetic calculation (the same type of calculation is done in federal cases).

**Example 1**

- A. Base Guideline Range=[58–64 months]  
(Base Pt Score=5; Parole Eligibility Date at 40 months)  
Base guideline range=[ 40 + (18–24) months]
- B. Disciplinary Range=[12–18 months]
- C. Outstanding Program Achievement Range=None  
Total Guideline Range=70–82 months

**Example 2**

- A. Base Guideline Range=[76–88 months]  
(Base Pt Score=6; Parole Eligibility Date at 40 months)  
Base guideline range=[ 40 + (36–48) months]
- B. Disciplinary Range=Not applicable
- C. Outstanding Program Achievement Range (Based Option 1)=[ – (18–24 months)]  
Total Guideline Range=56–64 months

**Example 3**

- A. Base Guideline Range=[116–128 months]  
(Base Pt Score=6; Parole Eligibility Date at 80 months)  
Base guideline range=[ 80 + (36–48) months]
- B. Disciplinary Range=Not applicable
- C. Outstanding Program Achievement Range=[ – (20 months) (Based on 80 months outstanding program from top and bottom achievement— Option 2) of guideline range]  
Total Guideline Range=[96–108 months]

*Step 3. Select One of the Following Decisions*

- A. Parole effective within 9 additional months;
- B. Presumptive parole after 10–36 additional months; or
- C. A Reconsideration hearing after 36 months; or
- D. Continue to Expiration within 36 months.

If a presumptive parole date was given, there would be a record review 9 months prior to release (a changeover review) that would evaluate any disciplinary infractions or additional outstanding program achievement and retard or advance the date as appropriate, or schedule a rescission hearing if required.

*Step 4. Conducting a Reconsideration Hearing [if Required]*

At a three-year reconsideration hearing, the guideline ranges for

disciplinary record (since the last hearing) [step 1(b)] and outstanding program achievement (from the last hearing) [step 1(c)] will be determined and added to or subtracted from the total guideline range determined at the last hearing. Otherwise, the actions available to the Commission will be the same as at an initial hearing.

#### Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this proposed rule would not be a significant rule within the meaning of Executive Order 12866. The proposed rule would not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that will not substantially affect the rights or obligations of non-agency parties pursuant to section 804(3)(C) of the Congressional Review Act.

#### List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Dated: May 2, 2000.

**Michael J. Gaines,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 00-11521 Filed 5-8-00; 8:45 am]

**BILLING CODE 4410-31-P**

## POSTAL SERVICE

### 39 CFR Part 111

#### Loading Requirements for PVDS Mailings

**AGENCY:** Postal Service.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** On December 23, 1999, the Postal Service published a Proposed Rule (64 FR 72044) seeking comments on a proposed revision to the Domestic Mail Manual (DMM) to require that, if Periodicals mail is on the same vehicle as Standard Mail in a plant-verified drop shipment (PVDS), then the Periodicals mail must be loaded toward the tail end of the trailer so that Periodicals mail can be offloaded first for each destination entry. On February 11, 2000, the Postal Service published a notice that extended the comment period for this proposed rule until March 15, 2000 (65 FR 6950).

Based on the comments received, the Postal Service is withdrawing the proposed rule. The loading requirement

for Periodicals mail in a PVDS mailing will continue to be an optional—or preferred—method, but will not be required. Customers may access the current DMM requirements by going to the Postal Explorer Web site (<http://pe.usps.gov>). These specific mailing standards can be found in DMM E651.2.2, E652.4.2, P750.2.12, and P750.2.13.

#### SUPPLEMENTARY INFORMATION:

##### Summary of Comments Received

The Postal Service received a total of 16 comments in response to the Proposed Rule.

Seven comments supported making the loading of Periodicals toward the tail end of the trailer a requirement. All of these comments came from Periodicals publishers. Their support for the Proposed Rule is based on the assumption that delivery service would improve if Periodicals mail could be identified, offloaded from vehicles, and processed as soon as possible. One commenter pointed out that this Proposed Rule is consistent with the Postal Service's commitment to the mailing industry to improve the delivery service of Periodicals mail. The same commenter raised questions about how this Proposed Rule might affect Periodicals costs.

One commenter gave cautious support to the Proposed Rule for the reasons cited above.

Eight comments opposed the Proposed Rule. Most of these commenters are in the printing and mail transportation industries. These comments focused on the cost and logistics implications of a requirement to load Periodicals mail toward the tail end of the trailer for each stop. Many commenters believed that having to "stagger" Periodicals and Standard Mail within a vehicle for each scheduled stop would increase their costs. There also were concerns about OSHA and Department of Transportation requirements for vehicle loading and unloading.

All of the commenters who opposed the Proposed Rule mentioned that they support the current standards in the Domestic Mail Manual, which allows mailers the option of loading Periodicals mail toward the tail end of vehicles for each stop.

Based on these reasons and after extensive discussions with customers and internal departments, the Postal Service has decided to withdraw the Proposed Rule. The Domestic Mail Manual will continue to contain the optional, or preferred, method of loading Periodicals mail toward the tail

end of vehicles so that the Periodicals mail can be offloaded first at each stop.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00-11451 Filed 5-8-00; 8:45 am]

**BILLING CODE 7710-12-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AR-8-1-7409; FRL-6603-9]

#### Approval and Promulgation of Implementation Plans; Arkansas; Regulation 19

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the Arkansas State Implementation Plan (SIP or plan). Specifically, EPA proposes to approve a recodification of and revisions to Arkansas' SIP. These revisions were adopted by the Arkansas Department of Environmental Quality (ADEQ) on January 22, 1999, and submitted to EPA by the Governor of Arkansas on March 5, 1999. The EPA also proposes to incorporate into the Arkansas SIP portions of Arkansas regulation for its operating permits program which relate to the construction and modification of major sources. This is necessary because the submitted SIP revision incorporates these provisions to ensure that major sources which must receive an operating permit meet the Federal requirements relating to the construction and modification of major sources.

The EPA proposes to approve these revisions based upon our finding that the regulations meet the requirements of the Clean Air Act (the Act) pertaining to the approval of SIPs and the Federal regulations which describe the requirements that a SIP must meet.

Furthermore, EPA proposes to approve revisions to Arkansas' program for the prevention of significant deterioration (PSD) of air quality to replace the increments for total suspended particulates (TSP) with increments for particulate matter less than 10 microns (PM-10). In conjunction with this action, EPA also proposes to remove the TSP area designation tables in title 40 of the Code of Federal Regulations (40 CFR) part 81 for Arkansas. The EPA is taking no action on a Chapter 8 of the submittal of Regulation 19 which pertains to

designated facilities. The EPA will act on Chapter 8 in a separate action.

**DATE:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, Air Permits Section (6PD-R), ATTENTION: Stanley M. Spruiell, at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document, are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency,  
Region 6, Air Permits Section (6PD-R), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Arkansas Department of Environmental Quality, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219-8913.

**FOR FURTHER INFORMATION CONTACT:** Stanley M. Spruiell of the EPA Region 6 Air Permits Section at (214) 665-7253 at the address above or at spruiell.stanley@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," or "our" means EPA.

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### I. Summary of Today's Action

#### A. What Action Are We Taking?

We propose to approve Regulation 19 of the ADEQ, except for Chapter 8—Designated Facilities. Regulation 19 revises and recodifies the Arkansas SIP.

The submitted regulation includes provisions which address the requirements of the Act and ensures the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) we promulgated under section 109 of the Act. The ADEQ adopted and submitted Regulation 19 under section 110 of the Act. The regulation includes:

- Enforceable emission limitations and other control measures and techniques,
- A program for enforcement of such measures,
- Provisions for the regulation of the modification and construction of stationary sources, and
- Other measures required under section 110 of the Act.

We also propose to incorporate into the Arkansas SIP portions of Arkansas Regulation 26—Regulation of the Arkansas Operating Permit Program, adopted July 23, 1993 and submitted to EPA on October 29, 1993. Under this proposal we will incorporate the provisions of Regulation 26 that are incorporated by reference by Regulation 19, Chapter 11. The provisions of Regulation 26 so incorporated are the provisions of Regulation 26 that meet the Federal requirements of 40 CFR part 51, subpart I as they apply to new and modified major sources that are permitted under Regulation 26.

We have reviewed the submittal and determine that Regulation 19 and the incorporated provisions of Regulation 26 meet the requirements of the Act. The following sections of this preamble summarize the requirements of regulations and our basis for proposing approval.

We have also prepared a Technical Support Document (TSD) which contains a detailed analysis of our evaluation and proposed approval of Regulation 19. The TSD is included as part of the public docket and is available at the addresses listed above.

#### B. Are There Provisions of Regulation 19 That We Are Not Acting On in Today's Proposal?

We are taking no action on Chapter 8—Designated Facilities. Designated facilities are regulated under section 111(d) of the Act. The review process of State Plans for designated facilities is carried out separately from other SIP activities. Please see section XI of this preamble for further discussion of designated facilities and the basis for taking no action in today's proposal.

### II. What Are National Ambient Air Quality Standards?

Section 109 of the Act requires the EPA Administrator to establish NAAQS

for air pollutants which the Administrator has issued air quality criteria (criteria pollutants). For each criteria pollutant, Administrator must establish

- A primary ambient air quality standard which is necessary to protect the public health, and
- A secondary ambient air quality standard to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant.

We have established NAAQS in 40 CFR part 50, National Primary and Secondary Ambient Air Quality Standards. The criteria pollutants for which NAAQS exist are: sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. Regulation 19 includes measures to ensure that NAAQS for these criteria pollutants are maintained.

### III. What Actions Has the State taken?

On January 22, 1999, ADEQ adopted Regulation 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control after holding a public hearing on November 23, 1998. Regulation 19 became effective as a State rule on February 15, 1999.

The Governor of Arkansas submitted Regulation 19 to us on March 5, 1999, and requested that we approve Regulation 19 as a revision to the Arkansas SIP. We reviewed the SIP submittal for administrative completeness to assure that it meets the criteria set forth in 40 CFR part 51, appendix V—Criteria for Determining the Completeness of Plan Submissions. We informed the Governor and ADEQ on May 25, 1999, that the submission met these criteria and is administratively complete. Our determination that the plan submission is administratively complete means that we consider it to be an official submission for the purposes of 40 CFR 51.103.

Regulation 19 includes the following Chapters and Appendix as described in Table 1 below:

TABLE 1.—CHAPTERS AND APPENDICES IN REGULATION 19 SUBMITTED BY ARKANSAS ON MARCH 5, 1999

Chapter	Title
Chapter 1 .....	Title, Intent, and Purpose.
Chapter 2 .....	Definitions.
Chapter 3 .....	Protection of the National Ambient Air Quality Standards.
Chapter 4 .....	Minor Source Review.
Chapter 5 .....	General Emission Limitations Applicable to Equipment.

TABLE 1.—CHAPTERS AND APPENDICES IN REGULATION 19 SUBMITTED BY ARKANSAS ON MARCH 5, 1999—Continued

Chapter	Title
Chapter 6 .....	Upset and Emergency Conditions.
Chapter 7 .....	Sampling, Monitoring, and reporting Requirements.
Chapter 8 .....	Designated Facilities.
Chapter 9 .....	Prevention of Significant Deterioration.
Chapter 10 .....	Regulations for the Control of Volatile Organic Compounds.
Chapter 11 .....	Major Source permitting Procedures.
Appendix A ....	Insignificant Activities List.

#### IV. Title, Intent, and Purpose—Chapter I

##### A. What Has Changed Since the Last Approval?

The provisions of Chapter 1 were previously identified in the Arkansas Rules of the Plan (ROP), Section 1—Title, Section 2—Purpose, and Section 9—Severability. These Sections were approved at 41 FR 43904 (October 5, 1976). These provisions are now recodified in Chapter 1, which is divided into Section 19.101—Title, Section 19.102—Applicability, Section 19.103—Intent and Construction, and Section 19.104—Severability.

Section 19.101 recodifies Arkansas ROP Section 1 and identifies the Title as “Regulations of the Arkansas Plan of Implementation of Air Pollution Control,” also referred to as the “Regulations of the Plan” and “Regulation 19.”

Section 19.102 recodifies portions of Arkansas ROP Section 2 and provides that Regulation 19 applies to any stationary source which has the potential to emit any Federally regulated pollutant.

Section 19.103 recodifies Arkansas ROP Section 2 and revises the Plan to more specifically identify the intent and construction of Regulation 19 as follows:

—Provide a clear delineation of the regulations of the ADEQ that are adopted to satisfy the requirements of the Act and the Federal regulations which stem from the Act. The Federal requirements that the ADEQ administers are: the NAAQS (40 CFR part 50), certain delegated subparts of the New Source Performance Standards (NSPS)(40 CFR part 60), provisions designed for PSD (40 CFR 52.21), minor new source review as described in Chapter 4 of Regulation 19 (40 CFR part 51) and certain

delegated subpart of the National Emission Standards for Hazardous Air Pollutants (NESHAP)(40 CFR parts 61 and 63).

—Limits Federal enforceability to only those requirements mandated by Federal law and facilitates a permit system which provides for permit conditions that are federally enforceable as well as those conditions which are State enforceable.

—Presumes a single permit system which encompasses both Federal and State requirements.

—Promotes a streamlined permitting process which mitigates regulatory costs and provides flexibility in maintaining compliance with Federal mandates.

Section 19.104 recodifies Arkansas ROP Section 9 and provides that when a provision of Regulation 19 is determined to be invalid, such invalidity shall not affect other provisions of Regulation 19.

##### B. Is Chapter 1 Approvable?

Chapter 1 requires that sources in Arkansas meet all requirements of the Act and is therefore approvable.

#### V. Definitions—Chapter 2

##### A. What Has Changed Since the Last Approval?

The definitions were previously identified in Arkansas ROP, Section 3—Definitions. The definitions are now codified in Chapter 2 which lists and defines several terms that are used in Regulation 19. The TSD contains a detailed analysis of the definitions in Chapter 2 and the basis for our proposed approval.

##### B. Is Chapter 2 Approvable?

The definitions in Chapter 2 are consistent with the corresponding definitions in the Act and in applicable Federal regulations. We therefore propose to approve Chapter 2 of Regulation 19.

#### VI. Protection of the National Ambient Air Quality Standards—Chapter 3

##### A. What Has Changed Since the Last Approval?

The provisions of Chapter 3 were previously documented in Arkansas ROP Section 2. Chapter 3 is divided into Section 19.301—Purpose, Section 19.302—Department Responsibilities, Section 19.303—Regulated Source Responsibilities, and Section 19.304—Delegated Federal Programs.

Section 19.301 defines the purpose of Chapter 3 as identifying the responsibilities of the State and of

regulated sources in meeting and maintaining the NAAQS. Section 19.302 identifies the ADEQ’s responsibilities as taking precautions to prevent the NAAQS from being exceeded. The precautions include conducting air quality monitoring and using computer modeling (according to EPA approved models) when it reasonably expects air quality to be in excess of the NAAQS.

Section 19.303 identifies the responsibilities of the regulated sources. Such responsibilities include: (1) obtaining a permit when required by law or Regulation 19, (2) operating equipment in such manner as to meet applicable requirements of permits and regulations, and (3) repairing malfunctioning equipment and pollution control equipment as quickly as possible.

Section 19.304 requires sources to comply with all Federal programs that the ADEQ is responsible for administering. This includes: (1) certain delegated subparts of the NSPS (40 CFR part 60), (2) provisions designed for PSD (40 CFR 52.21), (3) certain delegated subparts of the NESHAP (40 CFR parts 61 and 63), which were promulgated September 28, 1998.

##### B. Is Chapter 3 Approvable?

As submitted, Chapter 3 incorporates the previously approved SIP with revisions which clarify how the ADEQ will maintain compliance with the NAAQS. We therefore propose to approve Chapter 3 of Regulation 19.

#### VII. Minor Source Review—Chapter 4 and Parts of Chapters 3 and 5

##### A. What Has Changed Since the Last Approval?

The currently approved SIP was approved on May 5, 1989, 54 FR 18494. The requirements for permitting the construction of new and modified sources were previously documented in Arkansas ROP, Section 4—Permits. The current requirements are documented in Regulation 19, Chapter 4 (Minor Source Review) and in parts of Chapter 3 (Protection of the National Ambient Air Quality Standards) and Chapter 5 (General Emission Limitations Applicable to Equipment). Chapter 4 and parts of Chapters 3 and 5 contains the requirements for permitting new and modified minor sources.<sup>1</sup> The following paragraphs address our evaluation of Chapter 4 and the minor source review provisions of Chapters 3 and 5.

<sup>1</sup> The permitting requirements for major sources are in Chapters 9 and 11. These Chapters are discussed in sections XII and XIV of this preamble.

Chapter 4 recodifies the permitting requirements for minor sources and divides the program as follows:

TABLE 2.—DESCRIPTION OF EACH SECTION IN CHAPTER 4

Section	Title	Description
19.401 .....	General Applicability .....	Identifies emission thresholds for each air pollutant for which a permit is required if the threshold is exceeded.
19.402 .....	Approval Criteria .....	Requires a source to show that construction or modification does not violate control strategy and does not interfere with attainment or maintenance of a NAAQS.
19.403 .....	Owner/Operator Responsibilities .....	Requires that issuance of a permit does not interfere with owner's or operator's responsibility to comply with applicable portions of Regulation 19.
19.404 .....	Required Information .....	Identifies the minimum information required in a complete permit application.
19.405 .....	Action on Application .....	Describes the administrative process for reviewing and issuing a permit.
19.406 .....	Public Participation .....	Describes the procedures for public participation.
19.407 .....	Permit Amendments .....	Describes the procedures for amending a permit.
19.408 .....	Exemption from Permitting .....	Identifies construction activities which are exempt from permitting.
19.409 .....	Transition .....	Provides for sources which become subject to Regulation 19 as of the effective date of the Regulation to submit application meeting Regulation 19 requirements within 180 days the date that Regulation 19 became effective as a State regulation (February 15, 1999).
19.410 .....	Permit Revocation and Cancellation .....	Describes when the ADEQ may revoke or cancel a permit.
19.411 .....	General Permits .....	Describes provisions by which a source may obtain a general permit.
19.412 .....	Dispersion Modeling .....	Describes the requirements for dispersion modeling to demonstrate compliance with the NAAQS.
19.413 .....	Confidentiality .....	Provides for confidential treatment of information or trade secrets which are included in a permit application.

The TSD contains a more detailed description of each section and a detailed discussion of the basis for how each Section of Chapter 4 meets the Federal requirements in 40 CFR part 51, subpart I. The requirements of subpart I are discussed in greater detail in section VII.G of this preamble.

#### *B. Does Arkansas Address the Minor Source Review Requirements in Any In Other Part of Regulation 19?*

Arkansas also addresses requirements of 40 CFR part 51, subpart I in the following sections of Regulation 19:

Section 19.303. Department Responsibilities

Section 19.502. General Regulations

Section 19.504. Stack Height/Dispersion Regulations

Our analysis of Arkansas minor source review program includes our analysis of the new source review provisions of these sections in addition to the provisions of Chapter 4.<sup>2</sup>

<sup>2</sup> This section of the preamble only addresses Chapters 3 and 5 that pertain to minor source review. Other provisions of these Chapters, not related to minor source review are discussed elsewhere in this preamble as follows: Chapter 3 is discussed in Section VI and Chapter 5 is discussed in Section VIII.

#### *C. What Is Minor Source Review?*

Minor source review is the assessment of the emissions and their impacts on the ambient air from new and modified minor sources. The ADEQ adopted and submitted Chapter 4 as a revision to its SIP which includes its minor source review provisions. Chapter 4 includes a mechanism to assure that the emissions from new and modified minor sources:

- Do not violate the control strategy in its approved SIP and
- Do not interfere with the maintenance and attainment of the NAAQS.

#### *D. Why Is Minor Source Review Needed in the SIP?*

Minor source review is required by section 110(a)(2)(C) of the Act which requires each plan to “include a program to provide for the \* \* \* regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the national ambient air quality standards are achieved \* \* \*”

We also require plans to address the construction and modification of a facility, building, structure, or installation in 40 CFR part 51, subpart I—Review of New Sources and Modifications (subpart I). These

provisions require the plan to include provisions which ensure that new and modified sources will not violate applicable portions of the control strategy and will not interfere with the attainment or maintenance of a NAAQS.<sup>3</sup> See 40 CFR 51.160(a).

#### *E. What Is a Minor Source?*

A minor source is any source which does not meet the definition of a major source. The Act in section 302(j) defines the terms “major stationary source” and “major emitting facility” as “any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).” Regulation 19.903(B) adopts these definitions. The provisions of Regulation 19, Chapter 4 apply only

<sup>3</sup> Subpart I applies to the construction and modification of all sources, including major and minor sources. Chapter 4 of Regulation 19 only addresses the review requirements applicable to minor sources. Arkansas addresses the review requirements for major sources in Regulation 19, Chapter 9—Prevention of Significant Deterioration (discussed in section XII of this preamble), and in Chapter 11—Major Source Permitting Procedures (discussed in section XIV of this preamble).

to sources which are not "major" under this definition.

*F. What Are the Federal Requirements for Review of New or Modified Minor Sources?*

As mentioned in section VII.C, the requirements of a program for review of new and modified sources are contained in subpart I. This subpart consists of sections 51.160–51.164 which apply to

the review of new and modified sources.<sup>4</sup> We can approve any implementation plan which meets these requirements.

*G. Do the Minor Source Review Provisions of Chapters 3, 4, and 5 Meet the Requirements of Subpart I?*

The Tables 3 and 4 outline the requirements of subpart I and identifies the provisions of Regulation 19 which

satisfy these subpart requirements.<sup>5</sup> The TSD contains a more detailed discussion on the subpart I requirements and of the Regulation 19 provisions which meet the requirements in subpart I.

TABLE 3.—CHART COMPARING 40 CFR PART 51, SUBPART I TO ARKANSAS REGULATION 19, CHAPTERS 3, 4, AND 5

Provision of 40 CFR 51, subpart I	State rule for minor sources
Section 51.160 Legally enforceable procedures	
(a) Determine whether proposed construction or modification will violate control strategy or interfere with attainment or maintenance of a NAAQS.	Sections 19.401, 19.402, 19.403, 19.405, 19.407, 19.408, 19.410, 19.411, and 19.502.
(b) Prevent construction or modification which does not meet paragraph (a) as described above.	Sections 19.303, 19.402, 19.405, 19.410, 19.411, and 19.502.
(c) Submission of required information by owner or operator of source undergoing construction or modification.	Sections 19.404 and 19.405.
(d) Approval to construct does not affect responsibility to comply with control strategy.	Sections 19.303, 19.403, and 19.502.
(e) Identify types and sizes of facilities, buildings, structures, or installations that are subject to review.	Sections 19.401, 19.407, 19.40, 19.411, and Appendix A.
(f) Air quality data and dispersion and other air quality modeling .....	Sections 19.302 and 19.412.
Section 51.161 Public availability of information	
(a) State or local agency must provide opportunity for public comment on information submitted, and include agency's analysis of effects the construction or modification on ambient air quality, and the agency's proposed approval or disapproval.	Sections 19.405, 19.406, and 19.411.
(b) Minimum requirements for public notice .....	Sections 19.406 and 19.411.
(c) Public comment period other than 30 days if 30-day comment period conflicts with existing requirements.	N/A.
(d) Send copy of public notice to the EPA Regional Office, all other State and local air pollution control agencies having jurisdiction.	Section 19.406.
Section 51.162 Identification of responsible agency.	
Identify State or local agency responsible for meeting requirements of 40 CFR part 51, subpart I.	§ 19.405
Section 51.163 Administrative procedures	
Identify the administrative procedures that the responsible agency will follow in making the determination in 40 CFR 51.160.	Sections 19.404, 19.405, 19.406, 19.407, 19.408, 19.409, 19.410, 19.411, and 19.413.
Section 51.164 Stack height procedures	
The degree of emission limitation must not be affected by stack height that exceeds good engineering practice.	§ 19.504.

TABLE 4.—CHART COMPARING ARKANSAS REGULATION 19, CHAPTERS 3, 4, AND 5 TO 40 CFR PART 51, SUBPART I

State rule for minor sources	Provision of 40 CFR 51, subpart I
Chapter 3—Protection of the National Ambient Air Quality Standards	

Section 19.303. Regulated Sources Responsibilities Section 51.160(d).

<sup>4</sup> Subpart I also includes sections 51.165, Permit requirements, and 51.166—Prevention of significant deterioration of air quality (PSD). The requirements of these sections apply only to the construction and modification of major sources as defined in those sections. Section 51.165 is applicable to the permitting of major sources and major modifications in nonattainment areas. At present,

Arkansas has no nonattainment areas and section 51.165 does not apply. Section 51.166 applies to sources subject to PSD and is discussed in more detail in our evaluation of the PSD program in Chapter 9. See the discussion of the PSD program in section XII of this preamble.

<sup>5</sup> Please note that Tables 3 and 4 identify the provisions of Regulation 19 which satisfy the

requirements of subpart I. In addition to Chapter 4—Minor Source Review, certain requirements of subpart I are also satisfied in a portion of Chapter 3—Protection of the National Ambient Air Quality Standards and Chapter 5—General Emission Limitations Applicable to Equipment.

TABLE 4.—CHART COMPARING ARKANSAS REGULATION 19, CHAPTERS 3, 4, AND 5 TO 40 CFR PART 51, SUBPART I—Continued

State rule for minor sources	Provision of 40 CFR 51, subpart I
Chapter 4—Minor Source Review	
Section 19.401. General Applicability .....	Section 51.160(a) and (e).
Section 19.402. Approval Criteria .....	Section 51.160(a)–(b).
Section 19.403. Owner/Operator’s Responsibilities .....	Section 51.160(d).
Section 19.404. Required Information .....	Sections 51.160(c) and 51.163.
Section 19.405. Action on Application .....	Sections 51.160(a)–(c); 51.161(a); 51.162; and 51.163.
Section 19.406. Public Participation .....	Sections 51.160(b); 51.161(a)–(b), and (d); and 51.163.
Section 19.407. Permit Amendments .....	Sections 51.160(a), (e); and §51.163.
Section 19.408. Exemptions from Permitting .....	Sections 51.160(a), (e); and 51.163.
Section 19.409. Transition .....	Section 51.163.
Section 19.410. Permit Revocation and Cancellation .....	Sections 51.160(a)–(b); and 51.163.
Section 19.411. General Permits .....	Sections 51.160(a)–(b), and (e); 51.161(a)–(b); and 51.163.
Section 19.412. Dispersion Modeling .....	Section 51.160(f).
Section 19.413. Confidentiality .....	Section 51.163.
Chapter 5—General Emission Limitations Applicable to Equipment	
Section 19.502. General Regulations .....	Section 51.160(a)–(b).
Section 19.504. Stack Height/Dispersion Regulations .....	Section 51.164.

*G. Are the Minor Source Review Provisions of Chapters 3, 4, and 5 Approvable?*

As shown in Tables 3 and 4 above, the Minor Source Review provisions of Chapters 3, 4, and 5 meet the requirements of subpart I. We therefore find that these provisions meet the requirements of the Act and the requirements of subpart I. We therefore propose to approve these Minor Source Review provisions of Regulation 19.

**VIII. General Emission Limitations Applicable to Equipment—Chapter 5**

*A. What Has Changed Since the Last Approval?*

The currently approved SIP was approved on January 12, 1982 (47 FR 01291), January 14, 1982 (47 FR 02113), and February 23, 1989 (54 FR 07764). Emission limitations were previously documented in Arkansas ROP, Sections 5 and 8. Section 5 contained the regulations for new and modified equipment. Section 8 contained the regulations for existing equipment. The current Chapter 5 consolidates ROP Sections 5 and 8 into a single regulation. The Chapter generally defines the Federally regulated air pollutant limitations applicable to all equipment subject to the plan.

The Chapter is divided into Sections defining the Purpose (Section 19.501), General Regulations (Section 19.502), Visible Emission Regulations (Section 19.503), Stack Height/Dispersion Regulations (Section 19.504), and Revised Emission Limitations (Section 19.505).

The Sections on General Regulations (19.502) and Stack Height/Dispersion

(19.504) are discussed in Tables 3 and 4 in section IV of this preamble. These Tables identify the requirements of subpart I which these portions of Regulation 19 satisfy.

Section 19.503 documents the requirements for visible emissions and combines the requirements for new, modified, and existing equipment. It has been updated with terminology consistent with EPA Method 9 for the determination of opacity of visible emissions (40 CFR part 60, Appendix A).

Section 19.505 permits the Director to revise emission limitations upward or downward in certain situations. The Director may impose more restrictive emission limitations if necessary to protect the NAAQS. The Director may not approve a less stringent limitation if it would cause a violation of the NAAQS.

*B. Is Chapter 5 Approvable?*

Since the Chapter only consolidates requirements for new, modified, and existing equipment for visible emissions and updates the terminology, satisfies some requirements for subpart I, and restricts the Director’s ability to approve revised emission limitations if the revision would violate the NAAQS, we propose approval of Chapter 5.

**IX. Upset and Emergency Conditions—Chapter 6**

*A. What Has Changed Since the Last Approval?*

The currently approved SIP was approved on August 27, 1981, 46 FR 43145. The provisions for upset conditions were previously contained in

Arkansas ROP, Section 6. The current requirements in the event of an upset are documented in Chapter 6, Section 19.601. The requirements relating to an Emergency condition are contained in Section 19.602.

Section 601 defines an upset condition and sets requirements for action to minimize or eliminate the excess emissions. This Section meets the “enforcement discretion” approach and the “affirmative defense” criteria stated in EPA’s Excess Emission Policy (see memo *State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to Regional Administrators, Regions I–X, September 20, 1999). It also establishes reporting requirements which meet the record keeping and reporting aspects of an exceedence.

Section 602 defines emergency condition, such as acts of nature which are beyond the control of the source or operator. It also outlines the steps required to take acceptable corrective action when emissions are exceeded.

*B. Is Chapter 6 Approvable?*

Chapter 6 meets EPA’s policy on excess emissions, contains the necessary elements to make the requirements enforceable and is consistent with the current SIP. We propose approval of Chapter 6.

## X. Sampling, Monitoring, and Reporting Requirements—Chapter 7

### A. What Has Changed Since the Last Approval?

Sampling, monitoring, and reporting requirements were previously documented in Arkansas ROP, Section 7. The currently approved SIP was approved on August 27, 1981, 46 FR 43145. These requirements are now documented in Chapter 7, Section 19.701 through 19.706. In general, Chapter 7 applies only to federally regulated air pollutant emissions.

The Chapter is divided into Sections defining the Purpose of the Chapter (Section 19.701), requirements for Air Emissions Sampling (Section 19.702), Continuous Emissions Monitoring (Section 19.703), and Record Keeping and Reporting (Section 19.705). The Chapter has added Sections for a Notice of Completion (Section 19.704) and Public Availability of Emissions Data (Section 19.706).

The Sections on Air Emissions Sampling, Continuous Emissions Monitoring, and Record Keeping and Reporting are contextually similar to the previously approved SIP.

The Section added on Notice of Completion requires that for equipment for which a new major permit or major permit modification is required, the Department shall be notified in writing within 30 days of the date of commencement of construction or modification and the date of commencement of operation of the equipment.

The Section added for Public Availability of Emission Data requires that data obtained by the Department shall be correlated in units of applicable emissions limitations and made available to the public.

### B. Is Chapter 7 Approvable?

Since the Chapter's major change is to make the requirements applicable to Federally regulated air pollutants, which is acceptable, the added Sections increase requirements, and the remaining sections are essentially unchanged, we propose approving Chapter 7.

## XI. 111(d) Designated Facilities—Chapter 8

Under Section 111(d) of the Act, emission standards are to be adopted by the States and submitted to the EPA for approval. These standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to the NSPS. The procedures under which States submit these plans to control existing sources are defined

in 40 CFR part 60, subpart B. The submittal and review process of these State Plans is carried out separately from other SIP activities. We are thus taking no action on Chapter 8 in today's proposal.

## XII. Prevention of Significant Deterioration of Air Quality—Chapter 9.

### A. How Does Arkansas' SIP Currently Address PSD?

Currently, the SIP requirements for PSD are approved as the PSD Supplement to the Arkansas Plan of Implementation For Air Pollution Control. We approved the initial plan submitted by the Governor on April 23, 1981 (adopted April 10, 1981), and revisions submitted June 3, 1988 (adopted March 25, 1988) and June 19, 1990 (adopted May 25, 1990). We approved the current Arkansas PSD program on May 2, 1991 (56 FR 20137). The current PSD program is documented in 40 CFR 52.170(c) in the table "EPA Approved Regulations in the Arkansas SIP" and 40 CFR 52.181.

### B. How Does Regulation 19 Address PSD?

Arkansas recodified its PSD program in Regulation 19, Chapter 9. Chapter 9 recodifies the PSD regulations without substantive change except as discussed below.

### C. What Has Changed Since Our Last Approval of Arkansas' PSD Program?

We replaced the PSD increments for TSP with increments for PM-10 on June 3, 1993 (58 FR 31622). We promulgated this revision to the Federal PSD permitting regulations in 40 CFR 52.21, as well as revision to the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166.

These revised regulations specified the implementation date for States with SIP-approved PSD permitting programs (including Arkansas) as the date that we approve the revised State PSD program containing the PM-10 increments. In accordance with 40 CFR 51.166(a)(6)(i), each State with a SIP-approved PSD program was required to adopt the PM-10 increment requirements, which Arkansas submitted and which we are approving in this action. For further background regarding the PM-10 increments, see the June 3, 1993, **Federal Register** document.

In order to address the PM-10 increments, the State of Arkansas revised Regulation 19, Chapter 9. Arkansas changed the date of which the Federal regulations are incorporated by

reference from June 28, 1989 to June 3, 1994 (the effective date of the PM-10 increments). We have reviewed this revision and found that it addresses all of the required regulatory revisions for PM-10 increments. In today's action we propose to approve the recodification of Arkansas' PSD program and the revisions to incorporate the PM-10 increments into the SIP. We are also proposing, consistent with Arkansas' revisions, to remove the TSP area designation tables in 40 CFR part 81 for Arkansas.

### D. Why Are We Removing the TSP Area Designation Tables in 40 CFR Part 81 for Arkansas?

Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which: (1) do not meet a NAAQS (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, we published the original list of all area designations pursuant to section 107(d)(2) (section 107 areas), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(l)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (*i.e.*, increments).

We revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM-10 indicator. However, we did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM-10 promulgated at that time.<sup>6</sup> States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM-10 increments replaced the TSP

<sup>6</sup> We did not promulgate new PM-10 increments simultaneously with the promulgation of the PM-10 NAAQS. Under section 166(b) of the Act, we are authorized to promulgate new increments "not more than two years after the date of promulgation of \* \* \* standards." Consequently, we temporarily retained the TSP increments, as well as the section 107 areas for TSP.

increments. With the State adoption and implementation of the PM-10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM-10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, *i.e.*, "PSD areas," and to provide the geographic link necessary for implementation of the PM-10 increments.<sup>7</sup>

Thus, in the June 3, 1993, **Federal Register** document in which we promulgated the PM-10 increments, we stated that, for States with SIP-approved PSD programs, we would delete the TSP area designations at the same time we approve the revision to a State's plan incorporating the PM-10 increments. In deleting any State's TSP area designations, we must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM-10 NAAQS.

As stated above, Arkansas has adopted and submitted adequate PSD revisions for PM-10 increments. In addition, Arkansas has no TSP areas designated as nonattainment. All existing particulate control measures in the Arkansas SIP remain in effect to ensure continuing attainment and maintenance of the PM-10 standard throughout the State. Thus, deletion of the TSP area designations will not result in relaxation of any PM controls that would impact the PM-10 NAAQS. We believe it is appropriate at this time to delete the State's TSP designation tables in 40 CFR 81.304.

Consistent with the above discussion, we are proposing to delete all of Arkansas' existing TSP designation tables in 40 CFR 81.304 and placing these section 107 areas into the PM-10 area designation table in 40 CFR 81.304, consistent with the June 3, 1993 **Federal Register**.

#### *E. Is Chapter 9 approvable?*

The only significant changes to Chapter 9 is to incorporate the requirements for the PSD increments for PM-10. Since we have determined that the changes meet the requirements of the Act and of the Federal PSD requirements, we are proposing to approve Chapter 9. We are also proposing to TSP area designation tables in 40 CFR part 81 for Arkansas.

<sup>7</sup> Section 107(d)(4)(B)(iii) of the Act mandates that all areas not designated nonattainment for PM-10 by operation of law, are designated unclassifiable. The PM-10 increments apply in any area designated unclassifiable for PM-10.

### **XIII. Regulations for the Control of Volatile Organic Compounds—Chapter 10**

#### *A. What has changed since the last approval?*

The currently approved SIP was approved, in general, January 29, 1980 (45 FR 06569) as Arkansas volatile organic compound (VOC) Regulations, Sections 1 through 6. The most recent revision to Sections 3 and 4 was on October 13, 1981 (46 FR 50370). The most recent revision to Section 5 was on February 7, 1983 (48 FR 05722). The current Regulation integrates the VOC rules into Regulation 19 as Chapter 10, Sections 19.1001 through 19.1006. The Regulation 19 Sections are essentially the same as the Arkansas VOC Rules Sections. The Regulation 19 Sections are Title (19.1001), Purpose (19.1002), Definitions (19.1003), General Provisions (19.1004), Provisions for Specific Processes (19.1005), and Severability (19.1006).

Sections 19.1003 and 19.1004 were changed by moving definitions for "Volatile Organic Compounds," "Sources," "Organic compounds with negligible photochemical reactivity," "Commission," and "Potential to emit" to Chapter 2 containing other definitions.

Section 19.1004 contains only minor wording changes which corrected previous version or removed redundant wording. The requirement for Lowest Achievable Emission Rate for new major sources is changed to mirror the requirements of the Act which are in effect as of the effective date of this regulation. This change updates the requirements to the Federal Clean Air Act requirements.

Section 19.1005 relating to *Surface Coating of Metal Parts and Products* was changed such that the requirement that if more than one emission limitation applies to a specific coating, then the most (rather than the least) stringent emission limitation shall be applied. Section 19.1005(F) relating to *External Floating Roof Tanks* was changed to reduce the gap area between the secondary seal and tank wall for vapor mounted seals. This is a more stringent requirement.

All other Sections in Chapter 10 were unchanged.

#### *B. Is Chapter 10 approvable?*

Since Chapter 10, VOC Regulations, is essentially the same as the previously approved VOC Regulations and the minor changes are acceptable, we propose approval of Chapter 10.

### **XIV. Major Source Permitting Procedures—Chapter 11**

#### *A. What Does Chapter 11 Require?*

Chapter 11 of Regulation 19 addresses the permitting procedures for major sources which are also subject to Regulation 26, Arkansas' regulation for its operating permit program under title V.<sup>8</sup> Chapter 9 contains the process, already approved by EPA<sup>9</sup> for issuance of a new or major modification of an existing source which is major for purposes of PSD by virtue of incorporation by reference of the provisions of 40 CFR 52.21(b)-(r).<sup>10</sup> Chapter 11 requires major sources which are subject to Regulation 26 to also have their permit applications processed in accordance with the procedures contained in Regulation 26, which are incorporated by reference. Thus, Chapter 11 creates the nexus between the PSD and title V programs to allow Arkansas to issue one permit to its sources which are defined as major under both programs.

For minor sources, the permitting process is contained in Chapter 4 which complies with 40 CFR 51.160-51.164 as explained above. The process for issuance of major and minor construction permits was formerly in section 4 of the ROP. Chapters 4 and 9 of Regulation 19 do not, however, fully cover all PSD sources defined as major sources under section 302(j) of the Act and subject to Section 4 of the ROP. Chapter 11 is necessary to provide a process for permitting the following:

- Sources which are major for purposes of PSD but undergo a physical change or change in the method of operation which does not result in a significant net emission increase, *i.e.*, minor modifications. Such change therefore is not subject to PSD review.<sup>11</sup>

<sup>8</sup> This refers to the provisions of title V (Permits) of the Act (42 U.S.C. 7661, 7661a-7661f) and the implementing regulations under 40 CFR part 70 (State Operating Permit Programs). These provisions establish the elements that an operating permits program must meet under part 70. Arkansas' Regulation 26 contains the requirements of their operating permits program. Arkansas currently operates its title V program under an interim approval. See 60 FR 46171 (September 8, 1995). Arkansas is currently working with EPA to revise Regulation 26 to correct the deficiencies identified in the interim approval.

<sup>9</sup> See section XII in this preamble for a description of our approval of Arkansas' PSD program and of our evaluation of Chapter 9.

<sup>10</sup> Chapter 9, Section 19.904(A) incorporates the provisions of 40 CFR 52.21 (b) through (r).

<sup>11</sup> For purposes of PSD, 40 CFR 52.21(i)(1) provides that no stationary source or modification to which the paragraphs (j)-(r) apply shall begin actual construction without a permit which states that the source or modification meets such requirements. The provisions of section 52.21(j)-(r)

Subpart I, however, applies to the construction of all sources, including major and minor sources. Such change, therefore, must meet the applicable requirements of subpart I, sections 51.160–51.164. Regulation 26 contains the provisions which satisfy these provisions of subpart I.<sup>12</sup> These provisions are incorporated into Regulation 19 by Chapter 11.

- A source which is major for title V but not major for PSD. This would include a source whose potential to emit is 100 tons per year (TPY) or more but less than 250 TPY and is not one of the source types listed in 40 CFR 52.21(b)(1).<sup>13</sup> Although a new or modified source which is not a PSD major source is not subject to PSD, the

applicable requirements of subpart I, sections 51.160–51.164 nonetheless continue to apply as explained above. Regulation 26 contains the provisions which satisfy these provisions of subpart I.<sup>14</sup> These provisions are incorporated into Regulation 19 by Chapter 11.

Chapter 11 incorporates the applicable requirements of subpart I (sections 51.160–164) that are in Regulation 26 into Regulation 19, which we are proposing to approve into the SIP. By approving Chapter 11, we will also be approving the subpart I provisions of Regulation 26 which are incorporated by reference.

Through Chapter 11, Arkansas will ensure that the construction and modification of sources subject to the

Act's preconstruction review requirements will meet the applicable requirements of 40 CFR part 51, subpart I. The TSD includes our analysis of the provisions of Regulation 26 which ADEQ incorporates by reference into Regulation 19. The TSD documents how Regulation 26 meets the requirements of 40 CFR part 51, subpart I. It further demonstrates that the procedures in Regulation 26 will ensure that modifications which occur at title V sources will satisfy the requirements of the Act and subpart I. Table 4 below identifies the provisions of Regulation 26 which meet the requirements of subpart I. The TSD contains a detailed evaluation of how the subpart I requirements are met.

TABLE 4.—SUBPART I CHECKLIST—REVIEW OF NEW SOURCES AND MODIFICATIONS REVIEW REGULATIONS FOR ARKANSAS REGULATION 26 SOURCES

Requirement of 40 CFR part 51, subpart I	Provisions of Regulation 19 and 26 which meet subpart I
Section 51.160 Legally enforceable procedures .....	Section 26.3(a)–(b). Section 26.4(a)–(b), (h), (j)–(k). Section 26.5(a)(1), (3)–(4), and (b). Section 19.302(A)–(B). Section 19.303(A)–(C). Section 19.502(A)–(C).
Section 51.161 Public availability of information .....	Section 26.6(a), (b)(1)(i)–(ii), (v), (b)(4), (c)(1)–(2), (d)(1)–(2).
Section 51.162 Identification of responsible agency. ....	N/A (already in approved plan).
Section 51.163 Administrative procedures .....	Section 26.3(a)–(b). Section 26.4(a)–(b), (h), (j)–(k). Section 26.5(a)(1), (3)–(4), and (b). Section 19.302(A)–(B). Section 19.303(A)–(C). Section 19.502(A)–(C).
Section 51.164 Stack height procedures .....	Section 26.6(a), (b)(1)(i)–(ii), (v), (b)(4), (c)(1)–(2), (d)(1)–(2). Section 19.504.
Section 51.165 Permit Requirements. (nonattainment) .....	N/A.
Section 51.166 Permit Requirements (PSD) .....	Regulation 19, Chapter 9.

Consistent with the above table, the ADEQ on March 21, 2000, forwarded a supplementary request that we incorporate only the provisions of

Regulation 26 identified in Table 5 below into the SIP which in satisfaction of subpart I requirements. Accordingly we propose to incorporate the following

provisions of Regulation 26 as shown in Table 5 below.

TABLE 5.—PROVISIONS OF REGULATION 26 PROPOSED TO BE INCORPORATED INTO THE SIP

Provision of Regulation 26 to be incorporated into the SIP	Title of section
Section 26.3 .....	Requirements for a Permit, Applicability.
Section 26.3(a) .....	Requirement for a permit.
Section 26.3(b) .....	Sources subject to permitting.
Section 26.4 .....	Applications for Permits.
Section 26.4(a) .....	Duty to apply.
Section 26.4(b) .....	Standard application form and required information.

apply to the construction of major sources and major modifications. "Major stationary source" is defined in section 52.21(b)(1) and "major modification" is defined in section 52.21(b)(2). A major modification is a physical change or change in the method of operation at a major stationary source which results in a significant net emissions increase. "Net emissions increase" is defined in section 52.21(b)(3) which describes how the net emissions increase is determined. Such increase is significant if it equals or exceeds the significance

thresholds in section 52.21(b)(23). Thus minor modifications at major stationary sources do not fall within the purview of the PSD requirements.

<sup>12</sup> According to Regulation 26, Section 26.2(e), "applicable requirement" is defined as "Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act\* \* \*(PSD *inter alia*) (this includes Regulation 19 Chapter 3 which requires protection of the NAAQS).

<sup>13</sup> Section 52.21(b)(1) is the definition of "major stationary source." Under this definition, a source is major for PSD if its PTE is 100 TPY or more and the source belongs to one of the source categories listed in section 52.21(b)(1)(i)(a). Otherwise, a source is a PSD major only if its PTE is 250 TPY or more, pursuant to section 52.21(b)(1)(i)(b). Under section 302(j) of the Act and 40 CFR part 70, a "major source" includes any stationary source with a PTE of 100 TPY or more.

<sup>14</sup> See footnote 12.

TABLE 5.—PROVISIONS OF REGULATION 26 PROPOSED TO BE INCORPORATED INTO THE SIP—Continued

Provision of Regulation 26 to be incorporated into the SIP	Title of section
Section 26.4(h) .....	Complete application.
Section 26.4(j) .....	Applicant's duty to supplement application.
Section 26.4(k) .....	Certification by responsible official.
Section 26.5 .....	Action on Application.
Section 26.5(a)(1), (3)–(4) .....	Action on part 70 applications.
Section 26.5(b) .....	Final action on permit application.
Section 26.6 .....	Permit Review by the Public, Affected States, and EPA.
Section 26.6(a) .....	Untitled.
Section 26.6(b)(1)(i)–(ii), (v), (b)(4) .....	Public participation.
Section 26.6(c)(1)–(2) .....	Transmission of permit information to the Administrator.
Section 26.6(d)(1)–(2) .....	Review of draft permit by affected states

Our analysis of these provisions of Regulation 26<sup>15</sup> are from the version of Regulation 26 which Arkansas adopted July 23, 1993, and submitted to us on October 29, 1993. The EPA approved this version of Regulation 26 as described in footnote 8. We will need to reexamine our analysis if Arkansas adopts Regulation 26 with significant changes and Arkansas may need to make further revisions to its SIP.

*B. Is Chapter 11 Approvable?*

Consistent with the discussion above and in the TSD, Chapter 11 meets the requirements of 40 CFR part 51, subpart I and are approvable.

**XV. Insignificant Activities List—Appendix A**

*Are There Any Activities That Do Not Need a Permit or Permit Revision?*

Section 19.408(A) of Regulation 19 provides that the types of activities or emissions that are listed in Appendix A are deemed insignificant on the basis of size, emission rate, production rate, or activity. By such listing, the Department exempts certain sources or types of sources from the requirements to obtain a permit or plan under this regulation. Listing in this part has no effect on any other law to which the activity may be subject. Any activity for which a state or Federal applicable requirement applies (such as NSPS, NESHAP, or Maximum Achievable Control Technology) is not insignificant, even if this activity meets the criteria below.

The TSD contains a detailed analysis of Section 19.408 and of Appendix A and a discussion of how these provisions meet subpart I.

*B. Is Appendix A Approvable?*

Consistent with our evaluation of Section 19.408 and of Appendix in the

<sup>15</sup> Regulation 26 is Arkansas' regulation for its operating permit program under title V. Arkansas currently operates its title V program under an interim approval. See 60 FR 46171 (September 8, 1995).

TSD, these provisions of Regulation 19 are approvable.

**XVI. Proposed Action**

We are proposing to approve the provisions of Regulation 19 as described in Table 6 below:

TABLE 6.—CHAPTERS AND APPENDICES IN REGULATION 19 THAT EPA PROPOSES TO APPROVE

Chapter	Title
Chapter 1 .....	Title, Intent, and Purpose.
Chapter 2 .....	Definitions.
Chapter 3 .....	Protection of the National Ambient Air Quality Standards.
Chapter 4 .....	Minor Source Review.
Chapter 5 .....	General Emission Limitations Applicable to Equipment.
Chapter 6 .....	Upset and Emergency Conditions.
Chapter 7 .....	Sampling, Monitoring, and reporting Requirements.
Chapter 9 .....	Prevention of Significant Deterioration.
Chapter 10 .....	Regulations for the Control of Volatile Organic Compounds.
Chapter 11 .....	Major Source permitting Procedures.
Appendix A .....	Insignificant Activities List.

We are taking no action on Chapter 8—Designated Facilities in today's proposal. As discussed in section XI, we review and approve the State Plans for designated facilities under subpart B of 40 CFR part 60. We will review and process Chapter 8 of Regulation 19 in a separate action.

**XVII. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13132*

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 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. The 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.

### C. Executive Order 13045

Executive Order 13045, entitled "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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it approves a State program.

### D. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, 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. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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.

The EPA has determined that the approval action promulgated 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 28, 2000.

**Carl E. Edlund,**

*Acting Regional Administrator, Region 6*

[FR Doc. 00-11566 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-6601-2]

### Montana: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by Montana. In the "Rules" section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action as not controversial. Unless we get written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

**DATES:** We must receive your comments by June 23, 2000.

**ADDRESSES:** Send written comments to Kris Shurr, 8P-HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139. You can view and copy Montana's application at the following addresses: Air and Waste Management Bureau, Permitting and Compliance

Division, Montana Department of Environmental Quality, Metcalf Building, 1520 East Sixth Ave., Helena, Montana 59620, Phone: 406/444-1430; and U.S. EPA Region VIII, Montana Office, 301 S. Park, Federal Building, Helena, MT 59626, Phone: 406/441-1130 ext 239.

**FOR FURTHER INFORMATION CONTACT:** Eric Finke, Waste and Toxics Team Leader, U.S. EPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: (406) 441-1130 ext 239, or Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, phone number: (303) 312-6139.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules" section of this **Federal Register**.

Dated: April 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00-11422 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-6602-9]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Chemform, Inc. Site from the National Priorities List (NPL); request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 4, announces its intent to delete the Chemform, Inc. Superfund Site in Pompano Beach, Broward County, Florida, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that all appropriate response actions under CERCLA have been implemented and that no further response action is appropriate. Moreover, EPA and FDEP have determined that the response actions conducted at the Site to date

have been protective of public health, welfare, and the environment.

**DATES:** Comments on the proposed deletion from the NPL should be submitted no later than June 8, 2000.

**ADDRESSES:** Comments may be mailed to: Mr. Jamey Watt, Remedial Project Manager, Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303-3104.

Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at EPA's Region 4 office and is available for viewing by appointment from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 docket office.

The address for the regional docket office is: Record Center, Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303-3104, Phone: (404) 562-9530.

Background information from the regional public docket also is available for viewing at the Site information repository located at: Broward County Main Library, Government Documents, 100 South Andrews Avenue, N.E., Fort Lauderdale, Florida 33301.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jamey Watt, Environmental Protection Agency, Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303-3104, (404) 562-8920.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents:**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

#### **I. Introduction**

EPA, Region 4, announces its intent to delete the Chemform, Inc. Superfund Site from the NPL, which constitutes Appendix B of the NCP, and requests comments on this proposed deletion. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this Site for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

#### **II. NPL Deletion Criteria**

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from or recategorized on the NPL when no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- Responsible parties or other persons have implemented all appropriate response actions required; or
- All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

CERCLA Section 121 (c), 42 U.S.C. 9621 (c), provides that if a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. The OU1 ROD signed on September 22, 1992, as amended by the Explanation of Significant Differences (ESD) signed on April 2, 1999, calls for such Five-Year Review events at the Site. Each Five-Year Review will examine the institutional controls identified at the Site and allow for additional ground water monitoring if necessary. Five-Year Reviews will continue until Site ground water meets maximum concentration limits (MCLs). The OU2 ROD selected remedy which addressed soil contamination did not require Five-Year Review events. Through soil excavation and removal actions, no hazardous substances remained in on-site soils above health-based levels. If new information becomes available that indicates a need for further action, EPA may initiate a remedial action. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

### III. Deletion Procedures

EPA, Region 4, will accept and evaluate public comments before making a final decision on deletion from the NPL. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

- EPA has recommended deletion and has prepared the relevant documents;
- The State has concurred with the deletion decision;
- Concurrent with this Notice of Intent to Delete, notices have been published in local newspapers and have been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete;
- EPA has made all relevant documents available at the information repositories; and
- EPA will respond to significant comments, if any, submitted during the public comment period.

Deletion of the Site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in section II of this document, 40 CFR 300.425(e)(3) provides that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions nor does it preclude future State action pursuant to State law.

The comments received on EPA's Notice of Intent to Delete during the notice and comment period will be evaluated by EPA before making the final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

A deletion occurs when the EPA Regional Administrator places a Notice of Deletion in the **Federal Register**. Any deletions from the NPL will be reflected in the next NPL update. Public notices and copies of the Responsiveness Summary, if necessary, will be made available to local residents by the Regional office.

### IV. Basis for Intended Site Deletion

The following Site summary provides the EPA's rationale for deleting the Site from the NPL.

The four-acre Chemform, Inc. Site lies in a highly industrialized section of northeastern Broward County, Pompano Beach, Florida. Chemform, Inc. operated

as a certified repair and refurbishment station of turbine engine components for the aerospace industry. Chemform, Inc. also helped design, manufacture, and market electrochemical machines for other industries in metal parts manufacturing.

In 1977, a Broward County Pollution Control Board inspector found Chemform, Inc. had violated county regulations by discharging industrial wastes (oily liquid and sludge) onto the ground. EPA conducted a site screening investigation in August 1985. In July 1986, an EPA contractor conducted a sampling investigation. This investigation found the main source area of contamination to be composed of inorganics in the soil. After evaluating the sampling results, EPA proposed the Site for the NPL on June 24, 1988. On October 4, 1989, the Chemform, Inc. Site was promulgated onto the NPL.

The Chemform, Inc. Site was divided into two Operable Units (OUs). Operable Unit 1 (OU1) addresses ground water contamination. Operable Unit 2 (OU2) addresses contaminated soils. There is a Record of Decision (ROD) for each operable unit. The OU1 ROD was signed on September 22, 1992 and documented a selected remedy of "No Action with Monitoring" for the ground water. The September 16, 1993 OU2 ROD selected remedy for soil was "No Further Action" due to previous soil removal operations.

The "No Action with Monitoring" selected remedy for OU1 was based on the Remedial Investigation results and risk assessment, which indicated no remediation of ground water was needed at the Site. This was due to soil and waste removal actions in 1992 designed to eliminate the potential for inorganic constituents to leach from surface and subsurface soils into the ground water. The OU1 ROD called for quarterly ground water monitoring of the contaminants of concern (COCs) for no less than one year. The COCs identified in the OU1 ROD were selected based upon their toxicological properties, concentrations and frequency of occurrence during the OU1 Remedial Investigation.

Post-ROD quarterly ground water monitoring of the COCs occurred from October 1993 to July 1994. Additional necessary ground water sampling occurred at the Site and is documented in the ESD signed on April 2, 1999. All post-ROD ground water monitoring results revealed that concentrations for the COCs were below Florida primary drinking water standards. However, as documented in the OU1 ESD, the presence of vinyl chloride in some post-ROD ground water samples resulted in

the initiation of Five-Year Review events. Vinyl chloride was not identified as a COC in the OU1 ROD. The Five-Year Reviews will monitor current institutional controls and allow for ground water sampling if necessary to ensure that the Site remains protective of human health and the environment.

The OU2 ROD addressed soil contamination. Soil characterization at the Site began with the OU1 Remedial Investigation in October 1989 and continued through the Removal Action in June 1992. Contaminant levels were substantially reduced by soil and source area cleanup activities, which Chemform, Inc. conducted under EPA oversight. More than 2,000 cubic yards of contaminated surface and subsurface soils were excavated. Confirmatory sampling of surface and subsurface soils revealed Soil Cleanup Levels (SCLs) for inorganics under the Removal Action had been reached.

As part of the OU2 soil removal actions at the Site, a septic tank system was excavated and disposed of off-site in June 1992. Testing of the tank contents showed the presence of trichloroethene (TCE) and related organic compounds. Concerns over potential ground water contamination from these compounds led to additional ground water sampling subsequent to the post-ROD quarterly ground water sampling. This further sampling revealed the presence of one TCE related compound, vinyl chloride, which was not targeted as a COC in the OU1 ROD, above the MCL. The events and results are summarized in the ESD. Due to the presence of vinyl chloride above the MCL, the ESD documents the need for Five-Year Reviews to be performed at the Site. The presence of vinyl chloride does not indicate a current health threat at the Site. Public water supply lines service the Site and surrounding area. State and local ground water use controls prevent a future exposure route from occurring. A Five-Year Review policy will verify existing ground water use controls and, as determined necessary by EPA, continue ground water monitoring.

### Applicable Deletion Criteria

One of the three criteria for site deletion, 40 CFR 300.425(e)(1)(ii), specifies that EPA may delete a site from the NPL if "all appropriate Fund-Financed Response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." EPA, with the concurrence of FDEP, believes that this criterion for deletion has been met and the Site is protective of human health

and the environment. Subsequently, EPA is proposing the deletion of this Site from the NPL.

#### State Concurrence

The Florida Department of Environmental Protection concurs with the proposed deletion of the Chemform, Inc. Superfund Site from the NPL. FDEP submitted a "Letter of Concurrence" to EPA on November 22, 1999. EPA also worked closely with FDEP in establishing a five year review period in the ESD.

Reports that contain extensive Site characterization information are available for review, along with the RODs and ESD, in the Administrative Record. A Deletion Docket, which contains all pertinent information supporting the deletion recommendation, is also available to the public at the EPA Regional office and the local Site repository.

Dated: April 6, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region IV.

[FR Doc. 00-11569 Filed 5-8-00; 8:45 am]

BILLING CODE 6560-50-P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 538

[Docket No.: NHTSA-2000-7087]

#### Automotive Fuel Economy Manufacturing Incentives for Alternative Fuel Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for comments.

**SUMMARY:** This document seeks comments to assist the National Highway Traffic Safety Administration (NHTSA) in the study of the success of the policy of providing corporate average fuel economy (CAFE) incentives for "dual-fuel" alternative fuel and gaseous dual-fuel vehicles and whether the agency should extend the incentive program for four years beyond MY 2004. Comments received in response to this document will be used to assist NHTSA in completing a study and issuing a report to Congress on or before September 30, 2000.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Comments to this document must refer to the docket number and notice number set forth above and be

submitted (preferably two copies) to: U.S. Department of Transportation, Docket Management, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9 a.m. to 5 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590: For non-legal issues: Mr. Lawrence Fleming, Consumer Programs Division, Office of Planning and Consumer Programs, NPS-32, Room 5320, telephone (202) 366-4936, facsimile (202) 493-2290. For legal issues: Otto Matheke, Office of the Chief Counsel, NCC-20, Room 5219, telephone (202) 366-5263, facsimile (202) 366-3820.

**SUPPLEMENTARY INFORMATION:** Corporate average fuel economy (CAFE) is the fuel economy, expressed in miles per gallon, of a manufacturer's fleet of: (1) Passenger cars, or (2) light trucks under 8,500 lbs. gross vehicle weight rating. Each manufacturer's average fuel economy is determined by the Environmental Protection Agency in accordance with procedures set forth in 49 U.S.C. 32904 and is calculated by computing the weighted fuel economy average of various model types of a manufacturer in a particular model year. The MY 2000 CAFE standard is 27.5 mpg for passenger cars and 20.7 mpg for light trucks. Failure to comply with the standard for either passenger car or light truck fleets in any given model year results in civil penalties of \$5.50 for each tenth of a mile per gallon per vehicle. (49 U.S.C. 32912(b)).

Manufacturers can earn "credits" to offset deficiencies in their CAFE performance. Specifically, when the average fuel economy of the vehicles manufactured by a manufacturer in a particular model year exceeds the average fuel economy standard, the manufacturer earns credits. The number of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the manufacturer exceeded the fuel economy standard in that model year times the number of vehicles they manufactured in that model year. These credits can be applied to any of the three consecutive model years immediately after, or if a carry-back plan is approved under 32903(b), before the model year for which the credits are earned. For a variety of reasons, credits are highly valued by manufacturers and provide a significant incentive to exceed the applicable standards for a given model year.

The Alternative Motor Fuels Act of 1988 ("AMFA"; Pub. L. 100-94, October 14, 1988) was enacted with the primary purpose of encouraging the development and use of methanol, ethanol and natural gas as transportation fuels and to promote the production of alternate fuel vehicles (AFVs) by auto manufacturers. To this end, AMFA contains provisions that allow for special treatment of vehicle fuel economy calculations for dedicated alternative fuel vehicles and dual-fuel vehicles that meet specified requirements. Passenger automobiles and light trucks that are eligible for special fuel economy calculations are "dedicated" and designed to operate exclusively on methanol or ethanol in composition of 70 percent or more or on natural gas; or "flexible fuel" vehicles that have the capability to operate on either conventional petroleum or a blend of alcohols in conjunction with either gasoline or diesel; or on natural gas. These vehicles also must meet energy efficiency and minimum driving range requirements. A manufacturer producing alternative fuel vehicles that meet energy efficiency and minimum driving range requirements may be able to raise their overall fleet fuel economy performance by manufacturing these vehicles.

AMFA directs the Secretary of Transportation to conduct a study and issue a report on the success of the policy of providing CAFE incentives for alternative dual-fuel vehicles by assessing alternative fuel use; cost and availability; the availability and affordability of vehicles capable of operating on either alternative or conventional fuel; the effect these vehicles have on the environment; energy conservation; and other relevant factors. This document seeks information and data that will assist the agency in conducting its assessment.

#### 1. Statutory Background

Section 6 of AMFA amended the fuel economy provisions of Title V of the Motor Vehicle Information and Cost Savings Act by adding a new section 513 that contains incentives for the manufacture of vehicles designed to operate on alternative fuels, including dual-fuel vehicles. Dual-fuel vehicles are generally defined as one of two classes that operate on either alternative fuel and gasoline or diesel fuel, or those capable of operating on natural gas or either gasoline or diesel fuel. Section 513(h) specifically defined a "dual energy" automobile as one that meets a minimum driving range and:

(i) Which is capable of operating on alcohol and on gasoline or diesel fuel;

(ii) Which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on alcohol as it does while operating on gasoline or diesel fuel; [and]

(iii) Which\* \* \* provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on a mixture of alcohol and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel as those vehicles capable of operating on alcohol and on either gasoline or diesel fuel, or those capable of operating on natural gas and on either gasoline or diesel fuel [.]

A "natural gas dual energy" automobile was defined as a vehicle that met specified minimum driving range, and:

(i) Which is capable of operating on natural gas and on gasoline or diesel fuel; [and]

(ii) Which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on natural gas as it does while operating on gasoline or diesel fuel [.]

The Energy and Policy Act of 1992 added new provisions of Section 513 of the Motor Vehicle Information and Cost Savings Act. In addition, the definition of alternative fuel was expanded to include liquefied petroleum gas, hydrogen, liquid fuels derived from coal and biological materials, electricity and any other fuel that the Secretary of Transportation determines to be substantially non-petroleum based and have environmental and energy security benefits. The law also revised terminology by replacing "dual energy" and "natural gas dual energy" with "alternative fueled vehicles" in order to more appropriately reflect the expanded list of fuels.

Beginning in MY 1993, manufacturers of AFVs that met the minimum driving range and energy efficiency criteria could qualify for special treatment in the calculation of their CAFE by computing the weighted average of fuel economy while operating on gasoline or diesel fuel and when operating on the alcohol after dividing the alcohol fuel economy by a factor of 0.15. For instance, a dedicated AFV that would achieve 15 mpg fuel economy while operating on alcohol would have a CAFE calculated as follows:

$FE=(1/0.15)(15)=100$  miles per gallon

For alternative dual-fuel vehicles, an assumption is made that the vehicles would operate 50% of the time on the alternative fuel and 50% of the time operating on conventional fuel, resulting in a fuel economy that is based

on a harmonic average of alternative and conventional fuel. The fuel economy for an alternative dual-fuel model is calculated by dividing 1.0 by the sum of 0.5 divided by the fuel economy as measured on the conventional fuel and 0.5 divided by the fuel economy as measured on the alternative fuel, using the 0.15 volumetric conversion factor. For example, for an alternative dual-fueled model that achieves 15 miles per gallon operating on an alcohol fuel and 25 mpg on the conventional fuel, the resulting CAFE value would be:

$1/((0.5/25)+(0.5/100))=40$  miles per gallon

The CAFE calculated values for a natural gas alternative fuel vehicle are arrived at in similar fashion. For the purposes of this calculation, the fuel economy is equal to the weighted average of the vehicle fuel economy while operating on natural gas and while operated on either gasoline or diesel fuel. Section 32905(c) specifies the energy equivalency of 100 cubic feet of natural gas to be equal to 0.823 gallons of gasoline, with the gallon equivalent of natural gas to be considered to have a fuel content equal to 0.15 gallons of fuel. The applicability of these special mileage calculation procedures is for vehicles manufactured for sale in MY 1993 through MY 2004, and the maximum allowable increase in a manufacturer's fleet average fuel economy attributed to these dual-fuel vehicles is 1.2 miles per gallon.

Section 32905(g) stipulates that the Secretary of Transportation (the Secretary), in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit a report to the Committee on Commerce, Science and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, a report containing the results of the study of the success of this alternative fuel vehicle mileage credit incentive policy and make recommendations whether to extend the program for up to an additional four (4) model years, with a maximum allowable increase in average fuel economy for a manufacturer attributed to dual-fuel vehicles of 0.9 miles per gallon. In preparation of this study and report, the Secretary is to consider the following factors:

(i) [T]he availability to the public of alternative fueled automobiles, and alternative fuels;

(ii) energy conservation and energy security;

(iii) environmental considerations; and

(iv) other relevant factors.

Upon completion of the study and report, the Secretary shall either promulgate a final rule that extends the incentive program for up to four additional model years, or issue public notice of the decision to terminate the incentive program with appropriate justification. The final rule or regulatory decision must be issued no later than December 31, 2001.

## 2. The Intent of the Alternative Motor Fuels Act of 1988 and the Basis for Evaluation of the Study and Report

It is clear that in creating special CAFE incentives for alternative fuel vehicles in AMFA and EPACT amendments, Congress intended to foster the commercialization of alternative fuels used for transportation and to further the development of the alternative fuel production, supply and distribution infrastructure. While AMFA has provisions for special CAFE calculations for both dedicated and dual-fuel vehicles, the statutory language directs that the study and report to Congress only assess the policy of providing CAFE incentives for dual-fuel vehicles and not dedicated AFVs. Accordingly, information on dedicated AFVs will be included in the study only as it pertains to evaluating the policy of providing CAFE mileage credits for dual-fuel vehicles.

It should be noted that while the Energy Policy Act of 1992 expanded the definition of alternative fuels to include liquefied petroleum gas, hydrogen, electrically powered and others, the rulemaking procedures for implementing the provisions of AMFA were already in process by the time these other energy source fuels were classified as "alternative" fuels, and the final rule implementing the related provisions of AMFA has procedures for CAFE credit calculations for alcohol and compressed natural gas powered vehicles only (ref: 59 FR 39368; August 3, 1994).

In executing the study and preparing the report, NHTSA will specifically attempt to evaluate the effect of the incentives upon the acceptance of alternative fuels as measured by the change in fuel use for light vehicle transportation. NHTSA will also examine the change in the number of vehicles that operate on alternative fuels manufactured since the 1993 model year and evidence, if any, that associates the design, development and production of these vehicles to the incentives offered in fuel economy calculations. Wherever possible, the costs and benefits to both consumers and industry will be

analyzed as well as the impact upon energy security and the environment.

### 3. Questions and Comments

To assess the impacts of the CAFE incentives program as described above, NHTSA, in coordination with the Environmental Protection Agency and the Department of Energy, seeks specific information and relevant comments. Set forth below are questions organized under three categories to facilitate collection of data and relevant information: (1) The automobile industry; (2) the fuel industry; and (3) general interest. NHTSA invites comments and input from all interested parties on any of the questions listed in this document. The information sought by the agency will assist in the preparation of the study and report to Congress on the effect of CAFE incentives for dual-fuel and gaseous dual-fuel vehicles and the agency's determination on whether to continue the program with a reduced maximum attributed allowance through the 2008 model year. In providing a comment on a particular matter or in responding to a particular question, interested parties are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to statistical and cost data or marketing studies, and the source of such information. Wherever used, the terms "sale", "production" and "design" pertain to passenger cars and light trucks up to 8,500 lbs. gross vehicle weight rating that are manufactured either domestically or imported for sale in the United States and U.S. Territories and possessions, including lease sales, fleet sales, etc.

NHTSA requests information and comments to the following questions:

#### *(A) Questions/Issues Primarily Related to Automobile Manufacturers*

1. How and to what extent has the AMFA CAFE incentives program affected manufacturers' decisions to design, manufacture and sell dual-fuel alcohol and natural gas powered vehicles and other alternative fuel vehicles? Specifically for MY 1993 through MY 2000, list all the alternative fuel vehicles that are offered for sale and for each vehicle line, indicate whether credits were a major factor, a minor factor, or of little or no consideration to the company's decision to offer an alternative fuel vehicle.

2. What was/is the price differential for offering alcohol and compressed natural gas powered dual-fuel vehicles and other alternative fuel vehicles versus conventionally fueled models? Please provide examples of

manufacturers' suggested retail price of applicable alternative fuel vehicle models versus the retail price of their conventional fuel counterpart models.

3. Using the response to Question 2, what was/is the "dollar value" of each AMFA qualifying vehicle, defined as the savings generated by avoiding CAFE penalties less the expenses associated with design and manufacturing of these alternative fuel vehicles?

4. What was/is the cost differential (on a per vehicle basis) to produce alcohol and compressed natural gas powered dual-fuel vehicles and other alternative fuel vehicles versus conventionally fueled models?

5. What new technologies have been specifically developed and implemented in order to accommodate the use of methanol/ethanol or natural gas to qualify for the fuel economy calculation benefit? What is the attributed cost of each of the technologies?

6. Have there been performance or durability problems associated with operating vehicles on methanol/ethanol or natural gas? If yes, please specify the nature (e.g., materials degradation due to incompatibility of oxygenated fuels, cold start and driveability issues, etc.) and the extent of the problems.

7. What efforts have manufacturers taken, or plan to take, to market dual-fuel or other alternative fuel vehicles to fleet operators? What information relative to performance or durability has been or will be provided by the fleet operators to the automobile manufacturer?

8. What initiatives have manufacturers and dealers taken to educate consumers about vehicles' capability to operate on an alternative fuel? Please provide any available owner's manual information, dealer bulletins, or other point of sale literature that is relevant.

9. What are the auto manufacturers' plans for MY 2001 through MY 2008 relative to the AMFA CAFE incentive program? How would the decision to extend the maximum allowable mileage increase at 0.9 mpg as prescribed by AMFA affect manufacturers' product strategy? Conversely, what effect would a decision not to extend the provision beyond MY 2004 have on manufacturers' product plans?

#### *(B) Questions/Issues Primarily Related to Fuel Producers, Distributors and Retailers*

1. How has the AMFA CAFE program affected the fuel industry's production and sales of alternative fuels from 1993 through 2000?

2. How has the AMFA CAFE program directly affected the number of alternative fuel refueling sites from 1993 through the present time?

3. How will the fuel industry's projected plans for production and distribution be affected by the decision to either continue or discontinue a vehicle-specific incentive program beyond 2004?

4. Does the fuel industry believe that changes to the infrastructure as a result of considerations other than/in addition to the AMFA CAFE credits program would be warranted in order to improve an alternative fuels infrastructure? Please recommend any possible changes other than AMFA CAFE incentives that would facilitate further development of that infrastructure.

5. What efforts have been made by the fuel industry and other groups to educate consumers and promote the use of methanol/ethanol or compressed natural gas as an alternative fuel?

#### *(C) Questions/Issues of General Interest*

1. How difficult is it for consumers to find fueling locations for, and availability information on, alternative fuels? How do they seek alternative fuel locations?

2. What are the most common consumer complaints regarding problems or concerns related to the use of the dual-fuel vehicles or availability of the alternative fuels?

3. Assuming an ample supply of alternative fuels and vehicles, would consumers be willing to use alternative fuels over conventional ones? Please provide the basis for this response.

4. What changes would be necessary to improve consumer awareness and acceptance of alternative fuel vehicles?

5. What other efforts could government or industry take to increase the use of alternative fuels?

6. Is there any information available on the approximate percentage of vehicle mileage for which a owner/driver of a dual-fuel vehicle uses the alternative fuel versus gasoline or diesel fuel? If so, should the "50/50 split" used in the credit calculation formula be revised to a value that more closely represents actual alternative fuel use?

7. Are there companion programs necessary to ensure that vehicles manufactured for purposes of complying with the CAFE requirement are actually using alternative fuels?

8. Has the AMFA CAFE program affected the total use of methanol/ethanol and compressed natural gas use? If so, how?

9. What changes could be made to this program, either from the vehicle production aspect or the fuel industry

aspect, that would be perceived as an even greater incentive to produce, distribute and market alternative fuels in the future?

10. In addition to energy conservation, energy security, environmental considerations, and the availability of alternative fuel vehicles and alternative fuels to the public, what other factors should be considered in the evaluation of the policy of providing additional CAFE credits for dual-fuel vehicles?

11. Do you believe the policy of providing additional CAFE credits for dual-fuel vehicles should be continued? Please explain the basis for your position.

NHTSA solicits public comments on this document. It is requested but not required that two copies be submitted.

#### **How Do I Prepare and Submit Comments?**

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is: U. S. Department of Transportation, Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System website at <http://dms.dot.gov> and click

on "Help and Information" or "Help/Info" to obtain instructions.

#### **How Can I Be Sure That My Comments Were Received?**

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### **How Do I Submit Confidential Business Information?**

If you wish to submit any information under claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC-01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW, Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590.

#### **Will the Agency Consider Late Comments?**

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, NHTSA will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

#### **How Can I Read the Comments Submitted by Other People?**

You may read the comments by visiting Docket Management in person at Room PL-401, 400 Seventh Street, SW, Washington, DC from 9:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/search/>)

(2) On that page, click on "search".

(3) On the next page (<http://dms.dot.gov/search/>) type in the four digit Docket number shown at the beginning of this Notice. Click on "search".

(4) On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

**Authority:** (49 U.S.C. 32905(g); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 27, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00-11046 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-59-P**

# Notices

Federal Register

Vol. 65, No. 90

Tuesday, May 9, 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.

the meeting unless invited to do so by the Co-chairpersons.

Signed at Washington, DC, May 3, 2000.

**Timothy J. Galvin,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 00-11559 Filed 5-8-00; 8:45 am]

**BILLING CODE 3410-10-M**

regarding disposition of those comments and a final determination of changes will be made.

Dated: April 26, 2000.

**Jane E. Hardisty,**

*State Conservationist, Indianapolis, Indiana.*

[FR Doc. 00-11572 Filed 5-8-00; 8:45 am]

**BILLING CODE 3410-16-U**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Meeting of Advisory Committee on Emerging Markets

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the third meeting of the Advisory Committee on Emerging Markets will be held May 17, 2000. The role of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the Emerging Markets Program. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging markets in food and rural business systems and review proposals submitted to the Program.

**DATES:** The meeting will be held Wednesday, May 17, 2000, from 9:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review and discuss those proposals the Emerging Markets Office has received which may qualify for Emerging Markets Program funding. The minutes of the meeting announced in this Notice shall be available for review. The meeting is open to the public and members of the public may provide comments in writing to Douglas Freeman, Foreign Agricultural Service, Room 6506 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW, Washington, DC 20250, but should not make any oral comments at

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

**AGENCY:** Natural Resources Conservation Service (NRCS).

**ACTION:** Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

**SUMMARY:** It is the intention of NRCS in Indiana to issue two revised conservation practice standards in Section IV of the FOTG. The revised standards are Field Border (Code 386) and Use Exclusion (Code 472). These practices may be used in conservation systems that treat highly erodible land.

**DATES:** Comments will be received on or before June 8, 2000.

**ADDRESSES:** Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written or electronic request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Jane E. Hardisty, 317-290-3200.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### Invitation for Applications of Interest To Sell Intermediary Relending Program (IRP) Loans Under an Expanded Pilot—Extension of Time and Clarification of Issues

**AGENCY:** Rural Business-Cooperative Service (RBS), U.S. Department of Agriculture (USDA).

**ACTION:** Notice.

**SUMMARY:** On November 12, 1999 (64 FR 61575), RBS announced an expanded pilot sale of IRP intermediary loans made to third parties. The intended effect of the notice was to solicit applications of interest from intermediaries who wished to consider participation in the Fiscal Year (FY) 2000 loan sale. RBS stated that it would competitively select and authorize several intermediaries to sell an aggregate amount of approximately \$50 million of the existing IRP portfolios in FY 2000 from among those intermediaries who have advanced at least 95 percent of IRP funding received by the intermediary. That announcement was also intended to provide notice to potential purchasers and other parties interested in structuring the sale of ultimate recipient notes. This notice restates and clarifies language in the November 12, 1999, notice and extends the length of time available to submit an application, due date for submission, and date by which any sale of loans is required to be complete.

None of the intermediaries which submitted an application were able to meet all basic criteria for eligibility. Several other interested parties communicated with RBS that, although they were potentially interested in participating in the sale, they did not intend to respond to the invitation due to the short 45-day deadline for responses during the December 1999

holiday season. The Agency is concerned that many intermediaries made a basic examination of their portfolios during the earlier 45-day period and determined preparation time was inadequate.

RBS believes that the expanded pilot sale is necessary to allow the Agency to: (1) Test whether there is a sufficient market for a large amount of these loans, whether sold as whole loans or in some other structure; and (2) give the Agency sufficient data to evaluate the effectiveness and long-term program impact of allowing such sales.

Therefore, RBS has decided to reopen consideration for entities to participate. There is no expectation by the Agency that, after receiving approval to participate from RBS, any or all intermediaries will determine that it is ultimately in their interest to negotiate or consummate a sale in the required time frame. If RBS determines after the pilot program that sufficient interest exists, the Agency intends to begin the formal rule-making process.

**DATES:** The deadline for receipt of the applications of interest in the third-party sale in the applicable Rural Development State Office (see **ADDRESSES** below) is 4:00 P.M. Eastern Time on July 10, 2000. Applications received after that date will not be considered for participation in the expanded pilot sale. Any application of interest already submitted by potential buyers for those portfolios, and offerors of other services to buyers or sellers, shall remain valid and need not be resubmitted by those parties. However, parties which submitted applications of interest may revise or withdraw those applications if they so choose. New applications from additional parties will also be allowed, although an application only facilitates contact between intermediaries, service providers, and purchasers, and is not required for an entity to either provide services or purchase loans.

A deadline for completion of any sale resulting from an intermediary is hereby established as December 31, 2000, to allow a timely evaluation of the pilot sale and permit the start of formal rule making. None of the basic criteria for eligibility have been revised from the November 12, 1999, notice. However, certain language in the original invitation has been clarified.

**ADDRESSES:** Applications to participate in the expanded pilot sale should be mailed to the Rural Development State Office for the State in which the intermediary is headquartered. Listed below are the following addresses for Rural Development State Offices:

- Alabama  
USDA Rural Development State Office,  
Sterling Center, Suite 601, 4121  
Carmichael Road, Montgomery, AL  
36106-3683, (334) 279-3400
- Alaska  
USDA Rural Development State Office, 800  
West Evergreen, Suite 201, Palmer, AK  
99645-6539, (907) 761-7600
- Arizona  
USDA Rural Development State Office, 3003  
North Central Avenue, Suite 900,  
Phoenix, AZ 85012-2906, (602) 280-  
8700
- Arkansas  
USDA Rural Development State Office, 700  
West Capitol Avenue, Room 3416, Little  
Rock, AR 72201-3225, (501) 301-3200
- California  
USDA Rural Development State Office, 430 G  
Street, Agency 4169, Davis, CA 95616-  
4169, (530) 792-5800
- Colorado  
USDA Rural Development State Office, 655  
Parfet Street, Room E-100, Lakewood,  
CO 80215, (303) 236-2801
- Delaware-Maryland  
USDA Rural Development State Office, 4607  
South DuPont Highway, Camden, DE  
19934-9998, (302) 697-4300
- Florida/Virgin Islands  
USDA Rural Development State Office, 4440  
NW. 25th Place, Gainesville, FL 32614-  
7010, (352) 338-3400
- Georgia  
USDA Rural Development State Office,  
Stephens Federal Building, 355 E.  
Hancock Avenue, Athens, GA 30601-  
2768, (706) 546-2162
- Hawaii  
USDA Rural Development State Office,  
Federal Building, Room 311, 154  
Waiuanuenue Avenue, Hilo, HI 96720,  
(808) 933-8380
- Idaho  
USDA Rural Development State Office, 9173  
West Barnes Drive, Suite A1, Boise, ID  
83709, (208) 378-5600
- Illinois  
USDA Rural Development State Office, Illini  
Plaza, Suite 103, 1817 South Neil Street,  
Champaign, IL 61820, (217) 398-5235
- Indiana  
USDA Rural Development State Office, 5975  
Lakeside Boulevard, Indianapolis, IN  
46278, (317) 290-3100
- Iowa  
USDA Rural Development State Office,  
Federal Building, Room 873, 210 Walnut  
Street, Des Moines, IA 50309, (515) 284-  
4663
- Kansas  
USDA Rural Development State Office,  
1200 SW. Executive Drive, Topeka, KS  
66615, (785) 271-2701
- Kentucky  
USDA Rural Development State Office, 771  
Corporate Drive, Suite 200, Lexington,  
KY 40503, (606) 224-7300
- Louisiana  
USDA Rural Development State Office,  
3727 Government Street, Alexandria, LA  
71302, (318) 473-7920
- Maine  
USDA Rural Development State Office, 444  
Stillwater Avenue, Suite 2, Bangor, ME  
04402-0405, (207) 990-9106
- Massachusetts/Rhode Island/Connecticut  
USDA Rural Development State Office, 451  
West Street, Amherst, MA 01002, (413)  
253-4300
- Michigan  
USDA Rural Development State Office,  
3001 Coolidge Road, Suite 200, East  
Lansing, MI 48823, (517) 324-5100
- Minnesota  
USDA Rural Development State Office, 410  
AgriBank Building 375 Jackson Street,  
St. Paul, MN 55101-1853, (651) 602-  
7800
- Mississippi  
USDA Rural Development State Office,  
Federal Building, Suite 831 100 West  
Capitol Street, Jackson, MS 39269, (601)  
965-4316
- Missouri  
USDA Rural Development State Office, 601  
Business Loop 70 West, Parkade Center,  
Suite 235, Columbia, MO 65203, (573)  
876-0976
- Montana  
USDA Rural Development State Office, 900  
Technology Blvd., Unit 1, Suite B,  
Bozeman, MT 59715, (406) 585-2580
- Nebraska  
USDA Rural Development State Office,  
Federal Building, Room 152, 100  
Centennial Mall N, Lincoln, NE 68508,  
(402) 437-5551
- Nevada  
USDA Rural Development State Office,  
1390 South Curry Street, Carson City, NV  
89703-9910, (775) 887-1222
- New Jersey  
USDA Rural Development State Office,  
Tarnsfield Plaza, Suite 22, 790 Woodlane  
Road, Mt. Holly, NJ 08060, (609) 265-  
3600
- New Mexico  
USDA Rural Development State Office,  
6200 Jefferson Street, NE., Room 255,  
Albuquerque, NM 87109, (505) 761-4950
- New York  
USDA Rural Development State Office, The  
Galleries of Syracuse 441 South Salina  
Street, Suite 357, Syracuse, NY 13202-  
2541, (315) 477-6400
- North Carolina  
USDA Rural Development State Office,  
4405 Bland Road, Suite 260, Raleigh, NC  
27609, (919) 873-2000
- North Dakota  
USDA Rural Development State Office,  
Federal Building, Room 208 220 East  
Rosser, Bismarck, ND 58502-1737, (701)  
530-2037
- Ohio  
USDA Rural Development State Office,  
Federal Building, Room 507, 200 North  
High Street, Columbus, OH 43215-2477,  
(614) 255-2500
- Oklahoma  
USDA Rural Development State Office, 100  
USDA, Suite 108, Stillwater, OK 74074-  
2654, (405) 742-1000
- Oregon  
USDA Rural Development State Office, 101  
SW Main Street, Suite 1410, Portland,  
OR 97204-3222, (503) 414-3300
- Pennsylvania  
USDA Rural Development State Office,  
One Credit Union Place, Suite 330,  
Harrisburg, PA 17110-2996, (717) 237-  
2299

## Puerto Rico

USDA Rural Development State Office,  
New San Juan Office Building, Room  
501,159 Carlos E. Chardon Street, Hato  
Rey, PR 00918-5481, (787) 766-5095

## South Carolina

USDA Rural Development State Office,  
Strom Thurmond Federal Building, 1835  
Assembly Street, Room 1007, Columbia,  
SC 29201, (803) 765-5163

## South Dakota

USDA Rural Development State Office,  
Federal Building, Room 210, 200 4th  
Street, SW. Huron, SD 57350, (605) 352-  
1100

## Tennessee

USDA Rural Development State Office,  
3322 West End Avenue, Suite 300,  
Nashville, TN 37203-1084, (615) 783-  
1300

## Texas

USDA Rural Development State Office,  
Federal Building, Suite 102, 101 South  
Main, Temple, TX 76501, (254) 742-  
9700

## Utah

USDA Rural Development State Office,  
Wallace F. Bennett Federal Building, 125  
South State Street, Room 4311, Salt Lake  
City, UT 84147-0350, (801) 524-4320

## Vermont/New Hampshire

USDA Rural Development State Office,  
City Center, 3rd Floor, 89 Main Street,  
Montpelier, VT 05602, (802) 828-6000

## Virginia

USDA Rural Development State Office,  
Culpeper Building, Suite 238, 1606 Santa  
Rosa Road, Richmond, VA 23229, (804)  
287-1550

## Washington

USDA Rural Development State Office,  
1835 Black Lake Boulevard, SW., Suite  
B, Olympia, WA 98512-5715, (360) 704-  
7740

## West Virginia

USDA Rural Development State Office,  
Federal Building, 75 High Street, Room  
320, Morgantown, WV 26505-7500,  
(304) 284-4860

## Wisconsin

USDA Rural Development State Office,  
4949 Kirschling Court, Stevens Point, WI  
54481, (715) 345-7600

## Wyoming

USDA Rural Development State Office, 100  
East B, Federal Building, Room 1005,  
Casper, WY 82602, (307) 261-6300

**FOR FURTHER INFORMATION CONTACT:**

David W. Lewis, Rural Business-  
Cooperative Service, USDA, Room  
6858-S, Mail Stop 3224, South  
Agriculture Building, 1400  
Independence Avenue, SW.,  
Washington, DC 20250-3224,  
Telephone (202) 690-0797.

**SUPPLEMENTARY INFORMATION: IRP**

regulations published in 7 CFR part  
4274, subpart D, and section 1323 of the  
Food and Security Act of 1985 (Public  
Law 99-198) (7 U.S.C. 1932 note), as  
amended by Public Law 99-425,  
authorized the Secretary to make loans  
to entities for the purposes and subject  
to the terms and conditions specified in

the first, second, and last sentences of  
section 623(a) of the Community  
Economic Development Act of 1981 (42  
U.S.C. 9812(a)). The intermediary loans  
previously approved and administered  
by the U.S. Department of Health and  
Human Services under 45 CFR part  
1076, which were transferred to the  
USDA under the provisions of section  
1323 of the Food Security Act of 1985,  
are not eligible for participation in the  
pilot sale.

The Agency initiated a pilot program,  
through a Memorandum of  
Understanding with the Colorado  
Housing and Finance Authority (CHFA)  
in May 1997 to allow CHFA to sell its  
ultimate recipient portfolio on the  
secondary market. CHFA was created to  
address the critical funding needs of  
community-based development lenders  
in Colorado. In consultation with the  
Office of Management and Budget  
(OMB) and the U.S. Department of the  
Treasury, RBS has decided to expand  
the pilot sale, on a limited basis, in  
order to gather additional information  
and experience for consideration in  
establishing a permanent sales program.

Selected applicants will be posted on  
the Agency web site and notified in  
writing. The benefit of this loan sale to  
the intermediary will be an increase in  
portfolio liquidity, allowing the  
intermediary to re-loan money back into  
the community. The Agency advances  
loans to eligible intermediaries that  
subsequently re-loan to eligible  
applicants, including individuals,  
public or private organizations, or other  
legal entities with authority to incur  
debt and carry out the purpose of the  
loan. During the application process for  
this pilot sale, an intermediary will  
express interest in selling its seasoned  
portfolio. The initial screening of the  
intermediaries and their portfolios will  
be the responsibility of the Rural  
Development State Offices. State Offices  
will make recommendations to the  
National Office, and the National Office  
will evaluate the applications of  
interest, along with State Office  
recommendations, and make final  
selections for loan sales.

RBS will maintain lists of  
intermediaries expressing interest in  
offering their portfolios for sale,  
potential buyers for those portfolios,  
and offerors of other services to buyers  
or sellers, e.g., financial advisors.  
However, only intermediaries selected  
through the invitation of applications of  
interest process will be authorized to  
sell third-party loans. Intermediary  
applications of interest must include: (1)  
A history of the intermediary; (2) its  
latest audited financial statement; (3)  
summary data on each loan in the

portfolio including original and current  
amount, interest rate, terms, loan  
maturities, and loan performance; (4)  
delinquency rate on all loans in its  
portfolio; (5) reserves for loan payments;  
(6) the number of jobs created or saved;  
(7) the Standard Industrial Code for  
each loan recipient; (8) write-off of bad  
debts history; (9) a proposal that  
illustrates how the sale of the  
intermediary's portfolio supports Rural  
Development Mission Area target  
objectives, i.e., rural areas suffering  
fundamental, physical and economic  
stress, persistent poverty, out-migration,  
or as identified in the Rural  
Development State Strategic Plan; (10)  
non-federal fund leveraging of past or  
potential loans; and (11) the  
documentation of the need for added  
capital and unmet loan demand. It is  
important that the performance history  
of the overall portfolio, including any  
portion not proposed for sale, be fully  
detailed, including the volume and  
frequency of any delinquencies or  
default. It is equally important that  
intermediaries expedite the Agency  
review of their application of interest by  
responding to each of the questions in  
this notice in a format which allows a  
rapid evaluation of their response and  
minimizes the possibility that the  
reviewer will misunderstand the  
information provided.

**Paperwork Reduction Act**

In accordance with the Paperwork  
Reduction Act of 1995, the Agency has  
received emergency approval and  
clearance by OMB for the reporting and  
record keeping requirements contained  
in this Notice. The OMB control number  
for this information collection is 0570-  
0036.

**Criteria for Participation in the  
Ultimate Recipient Portfolio Sale**

The expansion of the pilot sale will be  
conducted on a competitive basis and  
under criteria set by RBS. The following  
criteria must be met (with adequate  
documentation provided) to be  
considered under this pilot sale.

1. Intermediaries must express  
interest in selling their entire ultimate  
recipient portfolio classified as seasoned  
loans (loans outstanding for at least 12  
months).

The following qualifications also  
apply:

a. The ultimate recipient loans to be  
sold must be current according to their  
promissory notes and other agreements.

b. The current 30-day or more  
delinquency rate for the entire IRP  
portfolio, including the portion not  
proposed to be offered for sale, must not

exceed 3 percent of the outstanding loan balance.

c. In the aggregate, loans will be sold at "hold" or "market" value, which are synonymous terms.

d. Notes will be sold to the purchasers without recourse to the intermediary.

e. Annual portfolio writeoffs by the intermediary of its loans will not exceed an average of 1 percent of the outstanding loan balances over the past 3 years in the same portfolio, measured as the percentage of outstanding loan balances of the total seasoned portfolio. Intermediary applications for the pilot program will be evaluated on the RBS point scoring system on a nationwide basis.

f. All due diligence expenses in connection with the sale will be paid by the purchaser and reflected in any sales contract entered into between intermediary and purchaser.

g. Due diligence expenses will only be authorized by the Agency to be paid if the intermediary portfolio is selected for the loan sale. The intermediary will be released from any subsequent liability in regard to the sale of notes sold as non-recourse loans. The due diligence process does not need to be complete at the time the application of interest is filed.

h. Intermediaries agree to use sale proceeds only to make new loans under 7 CFR part 4274, subpart D, except, as shown below, the intermediary may use sale proceeds to continue to pay its debt service to RBS.

i. The sales proceeds will be tracked separately and will be deposited into the intermediary's revolving loan fund, recapitalizing the fund for the purpose of making new loans in accordance with the eligible purposes outlined in the current Agency regulations, work plan, and loan agreements.

j. Any sale of ultimate recipient loans must be completed by December 31, 2000.

2. Intermediaries, who have advanced at least 95 percent of the aggregate total funds loaned them by RBS under this program and who meet the stated criteria, are eligible to apply for participation in this expanded pilot. The intermediary must provide documentation for the unmet demand for third-party loans and its ability to re-lend all of the proceeds to eligible projects within 3 years from the date of the loan sale before it will be considered for participation in this expanded pilot. This documentation must include a list of loans turned down for lack of funds, the aggregate number and amount of viable loans considered but not made, and the policies under which the intermediary establishes rates and terms

for the new loans to be made. [As one illustration, interest rate policy might be loans that will be at: (a) 2 percent interest if secured by a standby letter of credit from a financial institution; and (b) 5 percent if secured by other collateral. Another illustration might be to make loans at some rate in relation to Wall Street Journal Prime. Similarly, it is expected that the intermediary has some policy for setting maturities and balloon structures.] The intermediary may provide a survey indicating demand for additional funds. The intermediary must provide documentation evidencing project cost leveraging, reserves for losses, and loans made in Rural Development mission areas, targeted areas, and population. Refer to State Offices for details on target areas. The intermediary must reloan 95 percent of the replenished capital within the 3-year period following loan sale closing or at the end of the 3-year period must immediately make extra principal repayments on its IRP loans in the full amount of the undisbursed portion as required by current IRP regulations. Intermediaries selected to participate in the expanded third-party sale must maintain their IRP loans with the Agency in a current status. There will be no moratorium or deferment of payments granted on the loan to the intermediary from RBS to advance the new funds, and proceeds from the sale can be used for Agency debt service. Intermediaries must have sufficient alternative sources of funds to ensure IRP loan repayment and pay their administrative costs. Intermediaries permitted to sell their loan portfolios will be ineligible to apply for further IRP loans from RBS unless 95 percent of funds received from the sale have been advanced as loans. Upon selection of the IRP application for the loan sale, all pending IRP applications for funding for those applicants selected from the annual Agency appropriation cycle will be held in suspense. If the intermediary is unable to sell its loans under terms approved by RBS, the suspended IRP applications for funding will be reactivated for further funding consideration under the available Agency appropriation.

3. If there is Community Reinvestment Act credit associated with the loans, the amount of such credit is to be permanently noted, as it may influence the value to a final purchaser. RBS considers any financial contribution by the intermediary, other than meeting its own expenses associated with the sale, as potentially weakening the financial strength of the

intermediary to meet its long-term obligation to RBS. Intermediary affiliate resources or contributions from private sources, used in "hold" or "market" value sale of the ultimate recipient portfolio, will not be either a debt or a contingent liability of the intermediary and will be closely scrutinized by the Agency to assure the sale does not weaken the intermediary financially. Only intermediaries selected for the loan sale are authorized to sell their ultimate recipient portfolio and, even if selected by RBS, they are under no obligation to ultimately consummate a sale.

4. RBS may authorize the non-recourse sale of less than a total portfolio if, in RBS's opinion, a partial sale of the portfolio is financially sound and benefits program objectives. The sale may be structured as a sale of whole loans or as any related structure.

5. The intermediary will advertise the sale of its loans in media with significant national distribution, to attract the greatest possible interest from a diverse client base. Advertising costs may be shared on a cooperative basis with other participating intermediaries to assist in defraying advertising expenses. Such cost will be the responsibility of the intermediary. It is the intent of RBS to develop a coordinated approach to soliciting interest from eligible intermediaries and potential purchasers of the portfolio to ensure an equitable opportunity to participate and to obtain the best prices for the portfolios.

6. Intermediaries, as authorized by the Agency, may retain or offer to retain servicing rights to their portfolio loans sold in the pilot loan sale. In the event the intermediary retains servicing rights, the intermediary shall analyze the portfolio it manages, the staffing and processing, it maintains to make and service loans in each portfolio, and the steps it expects to take to maintain adequate staffing to service and make loans and present such analysis to RBS, in writing, as part of its application. If selected under the pilot sale, the intermediary will be required to obtain certification, from the purchaser, that the sale of servicing will not result in an acceleration of ultimate recipient loans and that appropriate and adequate servicing will continue following the loan sale.

7. Recapitalized funds realized from the loan sale will be reloaned for eligible purposes in accordance with current IRP regulations found at 7 CFR part 4274, subpart D, and 7 CFR part 1951, subpart R; the approved work plan; and the same processing procedure as third-party loans made

from Agency (Federal) funds. Recapitalized funds resulting from the sale, even though not Agency IRP loan funds, will be administered in accordance with current regulations and the approved work plan. The Agency will exercise the same oversight responsibilities as required for projects receiving IRP Federal funds directly from the Agency. These responsibilities include Agency review of individual third-party loans prior to approval, conduct of environmental reviews, and the requirement that 25 percent of the loan amount for all third-party loans be financed from other sources until funds have revolved. Proceeds from the sale shall only be used for recapitalization of the IRP revolving fund and will not be co-mingled with funds from other programs until funds have revolved. As previously stated, funds may be used for servicing the intermediary's debt with RBS.

8. All reserves and other cash in the IRP revolving fund not immediately needed, for loans to ultimate recipients or other authorized uses, will be deposited in Federal Deposit Insurance Corporation (FDIC)-insured accounts in banks or other financial institutions. Such accounts will be fully covered by FDIC insurance or fully collateralized with U.S. Government obligations and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

#### IRP Ranking Criteria

Priority points are determined as follows:

(MAXIMUM NUMBER OF POINTS INCLUDING ADMINISTRATOR PRIORITY POINTS: 110)

1. Percent of Portfolio Loaned—Maximum Points: 10.
  - a. Intermediary that has loaned out all of the IRP Federal funds (10 points).
  - b. Intermediary that has loaned out between 97–99 percent of the IRP Federal funds (8 points).
  - c. Intermediary that has loaned out 95 up to 97 percent of the IRP Federal funds (5 points).
2. Delinquencies—Maximum Points: 10.
  - a. Intermediary that has no ultimate recipient delinquency in its portfolio (10 points).
  - b. Intermediary that has 1 percent or less delinquencies in its portfolio based on outstanding loan balances (8 points).
  - c. Intermediary that has more than 1 percent but less than 2 percent delinquencies in its portfolio based on outstanding loan balances (5 points).
  - d. Intermediary that has between 2 percent up to and including 3 percent

portfolio delinquency rate inclusive on outstanding loan balances (3 points).

3. Writeoffs of Bad Loans—Maximum Points: 10.
  - a. Intermediary that has no writeoffs of ultimate recipient loans over the past 3 fiscal years (10 points).
  - b. Intermediary that has written off 1 percent or less of the loan balances of its ultimate recipient loans over the past 3 fiscal years (8 points).
4. Maturity of Loans—Maximum Points: 10.
  - a. Intermediary that has an average ultimate recipient loan portfolio maturity of 10 years or more (10 points).
  - b. Intermediary that has an average ultimate recipient loan portfolio maturity of at least 7 but less than 10 years (8 points).
  - c. Intermediary that has an average ultimate recipient loan portfolio maturity of at least 5 but less than 7 years (5 points).
  - d. Intermediary that has an average ultimate recipient loan portfolio with maturity of at least 3 but less than 5 years (3 points).
  - e. Intermediary that has an average ultimate recipient loan portfolio maturity of at least 1 but less than 3 years (1 point).
5. Leverage: Intermediary that has Obtained Non-Federal Loan or Grant Funds to Pay a Portion of the Cost of the Ultimate Recipient Projects—Maximum Points: 10.
  - a. Fifty percent or more of the total project cost (10 points).
  - b. At least 25 percent but less than 50 percent of the total project cost (8 points).
  - c. At least 10 percent but less than 25 percent of the total project cost (5 points).
6. Rural Area—Maximum Points: 10.
  - a. Intermediary that has made two or more ultimate recipient loans or made 25 percent of the total loans, whichever is the greater, to ultimate recipients in unincorporated areas, and cities or towns with populations of 10,000 or less based on 1990 census data (10 points).
  - b. Intermediary that has made ultimate recipient loans in unincorporated areas, and cities or towns with a population of more than 10,000, up to and including 20,000, based on 1990 census data (5 points).
7. Reserves for Loan Payments—Maximum Points: 10. Intermediary that has established a cash reserve to make RBS loan payments:
  - a. Greater than 21 months (10 points).
  - b. Greater than 18 months but not exceeding 21 months (8 points).
  - c. Greater than 15 months but not exceeding 18 months (5 points).

d. Any reserve level equal to or greater than 12 months but not exceeding 15 months (3 points).

8. Community Reinvestment Act Requirements—Maximum Points: 10. Intermediary's ultimate recipient loans that meet Community Reinvestment Act (CRA) requirements (10 points). The intermediary must determine, based on applicant information, which loans may qualify as Community Development Investments under the provisions of the CRA requirements. RBS is interested in how the intermediary made this determination and quantified the potential credits. RBS intends to assure that the intermediary obtains the maximum value from its portfolio and does not weaken its financial structure, as some potential purchasers may be willing to pay a premium for CRA credits of specific types in specific states. If the intermediary calls this to the attention of potential purchasers, a higher price may result. The Agency will rely on the applicant's submission of CRA data to assess the credibility of the applicant's submission.

- a. Greater than 50 percent of portfolio principal meets CRA requirements (10 points).
  - b. Greater than 25 percent but not exceeding 50 percent of portfolio principal (8 points).
  - c. Greater than 10 percent but not exceeding 25 percent of portfolio principal (5 points).
  - d. Any dollar value greater than \$0 but not exceeding 10 percent of portfolio principal (3 points).
9. Loans Sold at Par Value—Maximum Points: 5.

A par sale is defined as a sale in the aggregate which results in the receipt of sufficient funds from the sale of all principal and interest outstanding on the loans sold to third parties, which, together with funds already revolved, will allow the intermediary to meet its loan obligation to RBS. Note, this is not necessarily a sale which nominally sells each of the individual loans at or above the face value of the loan. Face value is defined as the note balance of an individual loan at the time of assessment.

10. Presidential/Administration Priority Areas: Empowerment Zones/Enterprise Communities, Pacific Northwest/Alaskan Initiative, Rural Development Mission Area, Targeted Areas and Population—Maximum Points: 15.

- a. Intermediary that has loaned between 50 and 75 percent of its IRP funds in these targeted area populations (15 points).

b. Intermediary that has loaned between 25 up to 50 percent in these targeted area populations (10 points).

c. Intermediary that has loaned less than 25 percent of its IRP funds in targeted area populations (5 points).

11. Administrator's Priority Points—Maximum Points: 10. For purposes of evaluation of the proposals by intermediaries, this factor is based on the following sub-elements, each with a maximum number of points, which, in the aggregate, may reach up to a maximum of 10 points which the RBS Administrator may assign for proposals which present superior approaches to the stated criteria above, or which will lead to better geographic balance of intermediary loans, which would be included in the sale.

a. Geographic balance of the areas served by the intermediaries selected to participate in the sale (Maximum = 6 points).

b. Support of Rural Development Objectives: Does the proposal illustrate how the sale of the intermediary's portfolio supports Rural Development Mission Area target objectives, *i.e.*, Presidential or administration priority areas, rural areas suffering fundamental, physical and economic stress, persistent poverty, out migration, or as identified in the Rural Development State Strategic Plan? What percentage of RBS funds to this intermediary have gone into these targeted areas or to targeted populations? An exceptional effort by the intermediary to successfully lend over 75 percent in targeted areas in their present portfolio demonstrates their ability to do the same with revolved funds (Maximum = 4 points).

#### Additional Application Requirements

The intermediary's application must also include the following:

1. Intermediary Name, Street Address (or other postal delivery information), Contact Person, Telephone and Fax Numbers, appropriate E-Mail addresses for making contact, and, if the entity has a web site, the Uniform Resource Locator (URL) address for that site.

2. History of the Intermediary.

3. Modified Work Plan, Detailing Mission or Goals, Outreach Service Plan.

4. Summarize Each Ultimate Recipient Loan in the Format Outlined in Form RD 1951-4:

a. Name and address of ultimate recipient.

b. Type of business.

c. Use of loan funds.

d. Original amount of loan.

e. Date of loan.

f. Unpaid balance.

g. Interest rate.

h. Terms of loan/date of final payment.

i. Collateral, including lien position.

j. Loan status.

k. Number of consecutive loan payments ultimate recipient has made in accordance with the promissory note.

l. Standard Industrial Code on the ultimate recipient loan.

5. Summarize the Intermediary Ultimate Recipient Portfolio.

a. Range and average interest rates.

b. Range and average repayment term.

c. Percent of loans made for which intermediary received first lien.

d. Percent of loans made with real estate collateral.

e. Percent of loans made with machinery and equipment collateral.

f. Percent of outstanding loan balances with current repayment status on report date.

g. Percent of loan balances written off.

h. Percent of loans made with one or more payments late by 30 days or more.

i. Percent of loans made for which terms have been renegotiated.

j. Use of leverage on each ultimate recipient loan.

k. Population where ultimate recipient loans were made.

l. Identify loans in mission area targeted areas.

#### Selections Announcement

The Agency will announce on its Internet web site, 45 days after the end of the solicitation period, the intermediaries selected to participate in the expanded pilot sale, potential purchasers, and third parties interested in structuring the sale of ultimate recipient notes. The Business Programs web site is located at

[www.rurdev.usda.gov/rbs/busp/bpdir.htm](http://www.rurdev.usda.gov/rbs/busp/bpdir.htm). Click on "IRP 3rd Party Sale." Click on "application" in paragraph four to receive a copy of the invitation for application and subsequent updates on this loan sale via the Internet (e-mail and web site hot links included). The information will provide updated lists of interested intermediaries, third-party advisors, and third-party purchasers. RBS employees will be notified of loan sale selections via memorandum and the Agency Intranet. All intermediaries making an application of interest under the pilot program will also be notified, in writing, of their selection or non-selection and of third-party purchaser and financial advisor interest. To be included in the published listings, interested third parties (purchasers and advisors) must provide the following information:

#### Third-Party Purchaser Requirements

Third-party purchasers will provide the company name, address, contact

person, telephone and fax numbers, e-mail address, and URL address (web site). The expression of interest must be in writing. A written letter accompanying the company history, expertise, examples, and references from the purchasers is required and will be submitted to the National Office, Attention: David Lewis, Loan Specialist, Business Programs Servicing Division, Rural Business-Cooperative Service, Rural Development, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250-3224.

#### Advisors—Structuring the Sale

Advisors will provide the company name, address, contact person, telephone and fax numbers, e-mail address, and URL address (web site). The expression of interest must be in writing. A written letter accompanying the company history, expertise, examples, and references from the advisors is required and will be submitted to the National Office, Attention: David Lewis, Loan Specialist, Business Programs Servicing Division, Rural Business-Cooperative Service, Rural Development, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250-3224.

#### Other Matters

1. Environmental Finding. A Finding of No Significant Impact, with respect to the environment, has been made by the Agency in accordance with RBS regulations at 7 CFR part 1940, subpart G, or its successor regulation.

2. Civil Rights Impact Analysis. It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, sexual orientation, and marital or familial status, or because all or part of an individual's income is derived from any public assistance program. To ensure that any proposal under this demonstration program complies with these objectives, the RBS approval official will complete Form RD 2006-38, "Civil Rights Impact Analysis Certification."

3. Executive Order 13132, dated August 4, 1999, Federalism. The Agency has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the

Notice is not subject to review under the Order.

4. Prohibition Against Advance Information on Funding Decisions. RBS employees involved in the review of applications and in the making of funding decisions are restricted from providing advance information to any person (other than an authorized employee of RBS) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage.

Dated: May 2, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00-11508 Filed 5-8-00; 8:45 am]

BILLING CODE 3410-XY-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 042600A]

#### International Whaling Commission; Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice defines guidelines for participating on the Committee and provides a tentative schedule of meetings and of important dates.

**DATES:** The May 17, 2000, Interagency Meeting will be held at 2:00 p.m. See **SUPPLEMENTARY INFORMATION** for tentative 2000 meeting schedules.

**ADDRESSES:** The May 17, 2000, meeting will be held in Room B841-B, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Cathy Campbell, (202) 482-2652.

**SUPPLEMENTARY INFORMATION:** The purpose of the May 17, 2000, Interagency Committee meeting is to review recent events relating to the IWC and to discuss the draft agenda and U.S. positions for the 2000 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the

Under Secretary for Oceans and Atmosphere. The U.S. Commissioner to the IWC has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

#### Tentative Meeting Schedule

The tentative schedule of additional meetings and deadlines, including those of the IWC, during 2000 follows. Specific locations and times will be published in the **Federal Register**.

*May 17, 2000 (Rm B841-B, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C.):* Interagency Committee meeting to review recent events relating to the IWC and to discuss the draft agenda and U.S. positions for the 2000 IWC annual meeting.

*June 5, 2000 (Rm B841-A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C.):* Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

*June 12-13, 2000 (Adelaide, Australia):* IWC Scientific Committee Working Groups and Sub-committees.

*June 14-26, 2000 (Adelaide, Australia):* IWC Scientific Committee.

*June 28-July 1, 2000 (Adelaide, Australia):* IWC Commission Committees, Sub-committees and Working Groups.

*July 3-6, 2000 (Adelaide, Australia):* IWC 52<sup>nd</sup> Annual Meeting.

#### Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Campbell (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: April 27, 2000.

**Don Knowles,**

*Director, Office Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00-11550 Filed 5-8-00; 8:45 am]

BILLING CODE 3510-22-F

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0031, Procurement Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to procurement activities.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Steven A. Grossman, Office of Financial Management, U.S. Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Grossman, (202) 418-5192; FAX: (202) 418-5529; email: [sgrossman@cftc.gov](mailto:sgrossman@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of

information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic,

mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Procurement Contracts, OMB Control No. 3038-0031—Extension*

The information collected consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of this collection of information as follows:

**ESTIMATED ANNUAL REPORTING BURDEN**

Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
151 .....	On occasion .....	151	4	604

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

This estimate is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 3, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00-11525 Filed 5-8-00; 8:45 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0019, Stocks of Grain in Licensed Warehouses**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for

public comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Lamont L. Reese, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, (202) 418-5310; FAX: (202) 418-5527; email: *Ireese@cftc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Stocks of Grain in Licensed Warehouses, OMB Control No. 3038-0019—Extension*

Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rule is designed to assist the Commission in the prevention of market manipulation and are promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.44 .....	3	Weekly .....	1,701	1.04	1,769

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

This estimate is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 3, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00-11526 Filed 5-8-00; 8:45 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0018, Information Concerning Warehouses**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the

notice. This notice solicits comments on requirements relating to information concerning warehouses and warehouse charges.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Lamont L. Reese, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:**

Lamont L. Reese, (202) 418-5310; FAX: (202) 418-5527; email: *Ireese@cftc.gov*.

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information of those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Information Concerning Warehouses, OMB Control No. 3038-0018—Extension*

Under Commission Rules 1.42 and 1.43, 17 CFR 1.42 and 1.43, contract markets must file a list of all warehouses regular for delivery. Upon call by the Commission, a schedule of warehouse charges and information concerning delivery notices must also be furnished. These rules are designed to assist the Commission in the prevention of market manipulation and are promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 1.42 & 1.43 .....	11	Weekly .....	178	.168	30

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

This estimate is based on the number of exchanges which file the information required under Rule 1.43.

Dated: May 3, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00-11527 Filed 5-8-00; 8:45 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0017, Market Surveys**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to market surveys conducted to determine use of futures markets by commercial entities or to investigate underlying causes of marketwide phenomena.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Lamont L. Reese, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, (202) 418-5310; FAX: (202) 418-5527; email: *Ireese@cftc.gov*.  
**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Market Surveys, OMB Control No. 3038-0017—Extension*

Section 8(a)(i) and (ii) of the Commodity Exchange Act (Act) provide that for the efficient execution of the provisions of the Act and in order to inform Congress, the Commission may make investigations concerning futures markets and may publish general statistical information from such investigations. In certain instances in response to abrupt and substantial changes in market prices, Congressional inquiry or other reasons, the Commission may conduct full market investigation requiring that all persons holding futures positions on the date in question in a specific market be identified. In such cases the Commission issues its call for survey information pursuant to Rule 21.02, 17 CFR 21.02.

The Commission estimates the burden of this collection of information as follows:

**ESTIMATED ANNUAL REPORTING BURDEN**

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 21.02 .....	400	On occasion .....	400	1.75	700

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

This estimate is based on the number of members of contract markets, futures commission merchants, and foreign brokers who receive an abbreviated call for information in machine-readable form.

Dated: May 3, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00-11528 Filed 5-8-00; 8:45 am]

**BILLING CODE 6351-01-M**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[OMB Control No. 9000-0075]

**Submission for OMB Review; Comment Request Entitled Government Property**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0075).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. This OMB clearance expires on July 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before July 10, 2000.

**ADDRESSES:** Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Linda Klein, Federal Acquisition Policy Division, GSA (202) 501-3775.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

“Property,” as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307-2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502-1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502-2 requires a contractor to submit a discrepancy report upon receipt of Government property when

overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505-1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505-3 requires a contractor to maintain records for Government material.

(g) FAR 45.505-4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505-5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505-7 requires a contractor to maintain records of real property.

(j) FAR 45.505-8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505-9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505-10 requires a contractor to maintain records for completed products.

(m) FAR 45.505-11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505-12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505-13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505-14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508-2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509-1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509-1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509-2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606-1 requires a contractor to submit inventory schedules.

(v) FAR 45.606-3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245-2(a)(3) requires a contractor to notify the contracting officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245-2(a)(4) requires a contractor to notify the contracting officer when government-furnished

property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245-2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245-4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245-5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245-5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245-5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245-7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245-7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245-9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245-10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245-11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245-11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245-17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245-18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245-18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph

(d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245-19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished "as is" from the time of inspection until time of receipt.

(nn) FAR 49.602-2(a)-(e) refers to the inventory schedule forms, SF's 1426 through 1434.

This information is used to facilitate the management of Government property in the possession of the contractor.

### B. Annual Reporting Burden

*Number of Respondents:* 27,884.

*Responses per Respondent:* 488.6.

*Total Responses:* 13,624,759.

*Average Burden Hours Per Response:* .4826.

*Total Burden Hours:* 6,575,805.

The total burden hours have changed under this OMB clearance 9000-0075 to reflect the incorporation of hours currently associated with OMB clearance 9000-0151 (FAR Case 1995-013) which is due to expire in June 2000 and will not be renewed. The OMB collection burden associated with Government property nonetheless remains unchanged.

### Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRs), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208-7312. Please cite OMB Control No. 9000-0075, Government Property, in all correspondence.

Dated: May 2, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00-11589 Filed 5-8-00; 8:45 am]

**BILLING CODE 6820-EP-U**

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Meeting of the Chief of Naval Operations (CNO) Executive Panel

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The CNO Executive Panel is to conduct the final briefing of the Navy Energy Strategy Short Study to the Chief

of Naval Operations. This meeting will consist of discussions relating to proposed Navy Energy Strategy.

**DATE:** The meeting will be held on May 31, 2000 from 10 a.m. to 11 a.m.

**ADDRESSES:** The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350-2000.

**FOR FURTHER INFORMATION CONTACT:**

Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302-0268, (703) 681-6205.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: April 27, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.*

[FR Doc. 00-11506 Filed 5-8-00; 8:45 am]

**BILLING CODE 3810-FF-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 July 10, 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: May 3, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

### Office of the Undersecretary

*Type of Review:* New Collection.

*Title:* National Evaluation of GEAR

UP.

*Frequency:* Monthly, Annually, Weekly.

*Affected Public:* Businesses or other for-profit, Not-for-profit institutions, State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 11565

*Burden Hours:* 3981.

*Abstract:* The evaluation responds to the legislative requirement in Pub. L. 105-244, Section G to evaluate and report on the effectiveness of projects funded under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. Students' and parents' expectations for postsecondary education, their knowledge of the academic preparation needed and availability of financial resources, and students' academic performance will be compared over time for students in

schools participating in GEAR UP and in schools not receiving GEAR UP services. Outcomes for GEAR UP participants will be analyzed by type and intensity of service.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO@—IMG—Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at No.( ). 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. 00-11510 Filed 5-8-00; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2000; correction.

**SUMMARY:** On April 28, 2000, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under Part D, Subpart 2 of the Individuals with Disabilities Education Act was published in the **Federal Register** (65 FR 25155). The notice contained a "chart" (65 FR 25169-25170) that provided closing dates and other information regarding the transmittal of applications for the Fiscal Year 2000 competitions. The chart inadvertently listed the wrong "Estimated number of awards" information for two competitions. This notice corrects the "Estimated number of awards" information.

In addition, the notice incorrectly lists eligible applicants for focus 2 twice

under the Research and Innovation to Improve Services and Results for Children with Disabilities program (65 FR 25156). This notice corrects the *Eligible Applicants* section for the Research and Innovation to Improve Services and Results for Children with Disabilities program (65 FR 25156) by clarifying that the first "For focus 2 \* \* \*" in this section should read, "For focus 1 \* \* \*".

**FOR FURTHER INFORMATION CONTACT:** For further information on this priority contact Debra Sturdivant, U.S. Department of Education, 400 Independence Avenue, SW, room 3317, Switzer Building, Washington, DC 20202-2641. FAX: (202) 205-8717 (FAX is the preferred method for requesting information). Telephone: (202) 205-8038. Internet: Debra.Sturdivant@ed.gov

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

BILLING CODE 4000-01-P

INDIVIDUALS WITH DISABILITIES EDUCATION ACT  
APPLICATION NOTICE FOR FISCAL YEAR 2000

CFDA No. and Name	Applications Available	Application Deadline Date	Deadline for Inter-governmental Review	Maximum Award (per year)*	Project Period	Page Limit**	Estimated # Of Awards
84.324T Model Demonstration Projects Focus Area 1: First two 12-month funding periods Focus Area 2: Final two 12-month funding periods Focus Area 2	05/05/00	06/16/00	N/A	\$150,000 \$75,000 \$180,000	Up to 48 mos.	50	15
84.325B Training Center In Early Intervention for Infants and Toddlers Who Have Visual Impairments Including Blindness	05/05/00	06/16/00	08/15/00	\$500,000	Up to 60 mos	70	1
84.325C Training Center In Early Intervention for Infants and Toddlers Who Have Hearing Impairments Including Deafness	05/05/00	06/16/00	08/15/00	\$500,000	Up to 60 mos.	70	1
84.325F National IHE Faculty Enhancement Center to Improve Results for Children with Disabilities in School	05/05/00	06/16/00	08/15/00	\$850,000	Up to 60 mos.	70	1
84.325Q Center to Inform Personnel Preparation Policy and Practice in Special Education	05/05/00	06/16/00	08/15/00	\$850,000	Up to 60 mos.	70	1
84.327G Research Institute on the Use of Assistive Technology in Education	05/05/00	06/23/00	08/22/00	\$700,000	Up to 48 mos.	70	1
84.327M Technology Research to Practice	05/05/00	06/30/00	08/29/00	\$170,000	36 months.	50	10
84.328M Parent Training and Information Centers Hawaii Idaho Louisiana New Hampshire North Carolina Oklahoma Pennsylvania Rhode Island Tennessee West Virginia Virgin Islands American Samoa New York (Interim)	05/05/00	06/23/00	08/22/00	\$160,680 \$158,780 \$257,100 \$158,600 \$311,700 \$198,180 \$469,750 \$159,400 \$279,800 \$160,680 \$107,820 \$107,120 \$339,800	Up to 60 mos.	50	12
84.329A An Evaluation of the State Improvement Grant Program	05/05/00	06/30/00	08/29/00	\$500,000	Up to 12 mos. 60 months.	50 70	2 1

\*The Assistant Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.

\*\*Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" requirements included under each priority description and in the "General Requirements" section of this notice. The Assistant Secretary rejects and does not consider an application that does not adhere to this requirement.

NOTE: The Department of Education is not bound by any estimates in this notice.

BILLING CODE 4000-01-C

**Electronic Access to This Document**

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<http://ocfo.ed.gov/fedreg.htm>  
<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

Dated: May 3, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00-11499 Filed 5-8-00; 8:45 am]

BILLING CODE 4000-01-P

**DEPARTMENT OF EDUCATION****National Center for Education Statistics (NCES); Notice of Meeting of the Advisory Council on Education Statistics**

**AGENCY:** U.S. Department of Education.

**ACTION:** Notice of meeting of the Advisory Council on Education Statistics.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** May 18-19, 2000.

**TIMES:** May 18, 2000—Full Council, 9:00 a.m.–1 p.m.; Statistics Committee, Policy Committee, and Management Committee, 1 p.m.–5 p.m. May 19, 2000—Statistics Committee, Policy Committee, and Management Committee, 8:30 a.m.–12 noon; Full Council, 12 noon–2:30 p.m.

**LOCATION:** The Wyndam Bristol Hotel, 2400 Pennsylvania Avenue NW, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Audrey Pendleton, National Center for

Education Statistics, 1990 K Street NW, Room 9115, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics (ACES) is established under Section 46(c)(1) of the Education Amendments of 1974, Public Law 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCS) in the Office of Educational Research and Improvement (OERI) and is responsible for advising on standards to ensure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Educational Progress (NAEP). This meeting of the Council is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Audrey Pendleton at 202 502-7300 by no later than May 10, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The proposed agenda includes the following:

- New member swearing-in;
- A status report from the NCES Commissioner on major Center initiatives; including the Department of Education's language for the reauthorization of NCES and ACES;
- The role of ACES in producing an annual report on the quality and usefulness of data collected and reported by the Center;
- Using results from the NCES Customer Service Surveys;
- Individual meetings of the three ACES Committees will focus on specific topics:
  - The agenda for the Statistics Committee includes a discussion of revision of NCES statistical standards, long-term trends in the NAEP writing assessment, and a proposed Recognition and Reward program using NAEP state results.
  - The agenda for the Policy Committee includes discussion of the Early Childhood Longitudinal Survey Birth Cohort and use of the results of the NCES Customer Service Survey.
  - The agenda for the Management Committee will also include use of the result of the NCES Customer Service Survey in addition to general management issues.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on

Education Statistics, National Center for Education Statistics, 1990 K Street NW, Room 9100, Washington, DC 20006.

**C. Kent McGuire,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 00-11494 Filed 5-8-00; 8:45 am]

BILLING CODE 4000-01-M

**DEPARTMENT OF EDUCATION****Arbitration Panel Decision Under the Randolph-Sheppard Act**

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on August 29, 1999, an arbitration panel rendered a decision in the matter of *Michael L. Adams v. Michigan Commission for the Blind (Docket No. R-S/97-20)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(a) upon receipt of a complaint filed by petitioner, Michael L. Adams.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202-2738. Telephone: (202) 205-9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205-8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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<http://ocfo.ed.gov/fedreg.htm>  
<http://www.ed.gov/news.html>

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code

of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

### Background

This dispute concerns the alleged improper denial by the Michigan Commission for the Blind, the State licensing agency (SLA), of Mr. Michael L. Adams' request to bid on a vending route at the Kalamazoo Psychiatric Facility in Kalamazoo, Michigan. A summary of the facts is as follows: On October 22, 1996, an opportunity to manage a vending route became available and was advertised under the SLA's established procedures. Complainant bid on the vending route. The SLA found that the candidate with the most seniority was not in compliance with its rules and policies. Complainant alleges that, while he was second in line in seniority and was in compliance, he was not selected.

Complainant alleges several irregularities in the SLA's procedures in awarding the vending route. First, complainant alleges that the SLA failed to award the vending route in accordance with its own rules and regulations regarding the timeframe of the award.

Second, complainant alleges that he, as the next qualified bidder, did not receive an offer from the SLA to operate the vending route because of complaints received about him from one of the facilities on the route. Complainant further states that, while the vending route was developed with the full participation of the Elected Committee of Blind Vendors, it was changed after private phone calls to members by the Business Enterprise Program staff and was not presented to an open committee meeting.

Complainant requested an administrative review of this matter, which was held on December 12, 1996. Subsequently, complainant requested that the SLA convene a full evidentiary hearing, which was held on March 26, 1997, and April 22, 1997.

In a decision dated May 30, 1997, the Administrative Law Judge (ALJ) recommended that the SLA evaluate the qualifications of the vendors who responded to the October 22, 1996, bid announcement for the vending route. If the SLA found the complainant to be the successful bidder, the ALJ ruled that

the complainant should, with certain stipulations, be awarded the vending route.

In a letter dated June 23, 1997, the SLA transmitted to complainant a copy of its final agency action dated June 16, 1997, which rejected the decision of the ALJ.

On September 15, 1997, complainant was notified that the SLA intended to revoke his vending license at the Kalamazoo Psychiatric Hospital for alleged failure to comply with routine business and food service practices and to sign in and out of the facility. On November 24, 1997, Mr. Adams filed a request for a full evidentiary hearing, which was held on February 10, 1998. In a decision dated April 22, 1998, the ALJ recommended that the SLA not revoke Mr. Adams' vending facility license. In a letter dated June 15, 1998, the SLA transmitted to complainant a copy of its final agency action rejecting the ALJ's decision and revoking Mr. Adams' vending license.

In November, 1998, complainant amended his original complaint to include the issue of license revocation. It is these two decisions that complainant sought to have reviewed by a Federal arbitration panel. An arbitration panel heard these matters on April 27, 1999, and on August 17 and 20, 1999, respectively.

### Arbitration Panel Decision

The issues before the arbitration panel were (1) whether the Michigan Commission for the Blind violated the Act (20 U.S.C. 107b-1(3)), the implementing regulations (34 CFR 395.14), and its own rules and regulations in allegedly improperly denying the complainant's bid on a vending route; and (2) whether the Michigan Commission for the Blind violated the Act, implementing regulations, and its own rules and regulations in improperly revoking Mr. Adams' vending license.

In a decision dated August 29, 1999, regarding issue #1, the majority of the panel after deliberation determined to adopt in total the decision and recommendation of the ALJ dated May 30, 1997. The majority ruled that Mr. Adams be compensated as follows: Mr. Adams must, for 12 months from the date of the award, be considered a priority bidder for any location within 50 miles of his home for any location or route for which he is qualified. Additionally, Mr. Adams is to respond to any offer with regard to a route or location within 7 days of that announcement.

Concerning issue #2, the complainant's license revocation, the

majority of the panel after reviewing the ALJ's decision on April 22, 1998, determined that it should be adopted in total. The panel further ruled that Mr. Adams' vending license should be reinstated immediately and that Mr. Adams is to receive unbroken seniority from his original date of seniority to the present time.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 3, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00-11500 Filed 5-8-00; 8:45 am]

**BILLING CODE 4000-01-P**

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## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Los Alamos

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, May 24, 2000, 6 p.m.-9 p.m.

**ADDRESSES:** Highlands University, Kennedy Hall, 11th Street & University Avenue, Las Vegas, NM.

**FOR FURTHER INFORMATION CONTACT:** Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505-989-1662; Fax: 505-989-1752; E-mail: [adubois@doeal.gov](mailto:adubois@doeal.gov); or Internet <http://www.nmcab.org>

### SUPPLEMENTARY INFORMATION:

#### Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

#### Tentative Agenda

6:00 p.m.-6:30 p.m. Opening Activities  
6:30 p.m.-7:00 p.m. Public Comment, Committee Reports: Environmental Restoration Monitoring and Surveillance Waste Management Community Outreach

**Budget**

Other Board business will be conducted as necessary.

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday-Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on May 4, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-11582 Filed 5-8-00; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Savannah River**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, May 22, 2000; 3:30 p.m.-9 p.m. Tuesday, May 23, 2000; 8:30 a.m.-4 p.m.

**ADDRESSES:** All meetings will be held at: DeSoto Hilton, 15 East Liberty Street, Savannah, GA 31412.

**FOR FURTHER INFORMATION CONTACT:**

Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; (803) 725-5374.

**SUPPLEMENTARY INFORMATION:****Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

**Tentative Agenda***Monday, May 22, 2000*

3:30 p.m. Executive Committee  
6:30 p.m. Public Comment Session  
7:00 p.m. Committee Meetings  
9:00 p.m. Adjourn

*Tuesday, May 23, 2000*

8:30 a.m. Approval of Minutes, Agency Updates  
Public Comment Session  
Facilitator Update  
Nuclear Materials Committee Report  
Strategic and Long Term Issues Committee Report  
Public Comment  
12 p.m. Lunch Break  
1 p.m. Center for Disease Health Effects Subcommittee Presentation  
Waste Management Committee Report  
Environmental Remediation Committee Report  
Administrative Committee Report  
Public Comments  
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting.

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual

wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved prior to publication.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling (803) 725-5374.

Issued at Washington, DC on May 4, 2000.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-11583 Filed 5-8-00; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Sandia**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM-SSAB), Kirtland Area Office (Sandia).

**DATES:** Wednesday, May 17, 2000, 5:30 p.m.-9 p.m. (MST).

**ADDRESSES:** West Mesa Community Center, 5500 Glenrio Street, NW, Albuquerque, NM 87185, (505) 768-3499.

**FOR FURTHER INFORMATION CONTACT:**

Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS-0184, Albuquerque, NM 87185 (505) 845-4094.

**SUPPLEMENTARY INFORMATION:****Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- 5:30 p.m. Check-In/Agenda Approval/  
Minutes
- 5:45 p.m. Meeting Manager Update—  
Press Release to the Media
- 6:00 p.m. Department of Energy  
Quarterly Presentation
- 7:00 p.m. Break
- 7:15 p.m. Stewardship
- 7:30 p.m. Public Comment
- 7:45 p.m. Draft Mixed Waste Landfill  
Report  
Mechanism for Comment  
Questions for Mark Baskaran
- 8:15 p.m. Class II Permit  
Modifications—No Further Action  
(NFAs)
- 8:45 p.m. Input into the June 21  
Agenda
- 8:50 p.m. Adjourn

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS-0184, Albuquerque, NM 87185, or by calling (505) 845-4094.

Issued at Washington, DC on May 4, 2000.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-11587 Filed 5-8-00; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Pantex Plant**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATE AND TIME:** Tuesday, May 23, 2000, 10 a.m.-2:30 p.m.

**ADDRESSES:** The Radisson Inn—East Wing, I-40 & Lakeside, Amarillo, TX.

**FOR FURTHER INFORMATION CONTACT:** Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; (806) 477-3125.

**SUPPLEMENTARY INFORMATION:****Purpose of the Board**

The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- 10:00 Agenda Review/Approval of  
Minutes
- 10:15 Co-Chair Comments
- 10:30 Task Force/Subcommittee  
Reports
- 11:00 Ex-Officio Reports
- 11:30 Updates—Concurrence  
Reports—DOE
- 12:00 Lunch
- 1:00 Presentation (To Be Decided)
- 2:00 Public Comments
- 2:15 Closing Comments
- 2:30 Adjourn

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX; phone (806) 371-5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays.

Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX; phone (806) 537-3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on May 4, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-11584 Filed 5-8-00; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Paducah**

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, May 18, 2000, 5:30 p.m.-8:30 p.m.

**ADDRESS:** Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, KY.

**FOR FURTHER INFORMATION CONTACT:** John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS-103, Paducah, KY 42001, (270) 441-6804.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

**Tentative Agenda**

5:30 p.m. Informal Discussion  
 6:00 p.m. Call to Order  
 6:10 p.m. Approve Minutes  
 6:20 p.m. Presentations/Board Response/Public Comments  
 7:20 p.m. Sub Committee Reports/Board Response/Public Comment  
 8:15 p.m. Administrative Issues  
 8:30 p.m. Adjourn

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, KY between 8: a.m. and 5 p.m. Monday-Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS-103, Paducah, KY 42001 or by calling him at (270) 441-6804.

Issued at Washington, DC on May 4, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00-11586 Filed 5-8-00; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Office of Fossil Energy; The City of Burbank, California, Public Service Department, et al.; Orders Granting Authority To Import and Export Natural Gas, Including Liquefied Natural Gas**

[FE Docket No. 00-07-NG; 00-13-NG; 00-16-NG; 00-15-NG; 00-14-NG]

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2000, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at <http://www.fe.doe.gov>, or on the electronic bulletin board at (202) 586-7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 27, 2000.

**John W. Glynn,**

*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

**Appendix**

*Orders Granting Import/Export Authorizations*

**DOE/FE AUTHORITY**

Order No.	Date issued	Importer/Exporter FE docket No.	Import volume	Export volume	Comments
1572 .....	3/06/00	The City of Burbank, California, Public Service Department 00-07-NG.	4.8 Bcf ....		Import from Canada beginning on January 1, 2000, and extending through December 31, 2001.
1574 .....	3/13/00	Public Service Company of New Hampshire 00-13-NG.	20 Bcf .....	(40)(1)	Import and export from and to Canada over a two-year term beginning on the date of first delivery.
1575 .....	3/20/00	Coral LNG, Inc, 00-16-LNG .....	800 .....		Bcf Import LNG from various sources over a two-year term beginning on the date of first delivery.
1576 .....	3/22/00	POCO Marketing Ltd, 00-15-NG .....	250 .....	Bcf	Import from Canada over a two-year term beginning on the date of first delivery after March 31, 2000.
1577 .....	3/22/00	Gasoducto Rosarito, S. de R.L. de C. V., 00-14-NG.	155 Bcf ....		Export to Mexico over a two-year term beginning on the date of first delivery.

[FR Doc. 00-11581 Filed 5-8-00; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. IC99-715-001, FERC Form No. 715]

#### Information Collection Submitted for Review and Request for Comments

May 3, 2000.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**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. 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 comments from eleven entities in response to an earlier **FEDERAL REGISTER** notice of August 20, 1999 (64 FR 45522-23) and has responded to those comments in this submission.

**DATES:** Comments regarding this collection are best assured of having their full effect if received on or before June 8, 2000.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street N.W., Washington, D.C. 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. Mr. Miller may be reached by telephone at (202) 208-1415 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 Form 715, "Annual Transmission Planning and Evaluation Report."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902-0171. The Commission is now requesting that OMB approve a three year extension of the current expiration date, with no changes to the existing collection. This is a mandatory collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of Section 213 of the Federal Power Act. Section 213(b) requires the Commission to collect annually from transmitting utilities sufficient information about their transmission systems to inform potential transmission customers, state regulatory authorities, and the public of available transmission capacity and constraints. This information collection also supports the Commission's expanded responsibilities under Sections 211, 212, 304, 307(a), 309 and 311 of the Federal Power Act as amended, for reviewing reliability issues, market structure relationships, for rate and other regulatory proceedings.

5. *Respondent Description:* The respondent universe currently comprises approximately 117 public utilities. There are 273 regulated transmitting utilities, however, many of these utilities submit some or all of the information through their North American Electric Reliability Council (NERC) regions. With three exceptions, power flow base cases are filed by each utility's NERC region, a total of nine regions. The descriptions of each utility's transmission planning assessment practices, including how reliability criteria are applied, the descriptions of the transmission planning reliability criteria used to evaluate system performance, system maps and diagrams are submitted separately by 117 respondents.

6. *Estimated Burden:* 18,720 total burden hours, 117 respondents, 1 response annually, 160 hours per response.

**Statutory Authority:** Sections 213 of the FPA (16 U.S.C. 8241) and Sections 211, 212, 304, 307(a), 309, and 311 of the Federal Power Act (FPA). (16 U.S.C. 824j-825(i)).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00-11487 Filed 5-8-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project Nos. 2576 and 2597]

#### Connecticut Light and Power Company; Notice of Public Information Meetings on the Housatonic Projects 2576 and 2597

May 3, 2000.

A significant number of hydroelectric licenses will expire between now and 2010. Among these are the Connecticut Light and Power Company's (CL&P) licenses for the Falls Village Project (Project No. 2597) and the Housatonic Project (Project No. 2576). Both of these projects are located on the Housatonic River, in the western portion of Connecticut in Fairfield, New Haven, and Litchfield Counties.

In its application for a new license, filed with the Federal Energy Regulatory Commission (Commission) on August 31, 1999, CL&P proposes to combine both projects under a single license for the Housatonic River Project (Project No. 2576). The existing licenses for the Falls Village Project and the Housatonic Project expire in August and September (respectively) of 2001.

Members of the public living in Western Connecticut have demonstrated significant interest in the Commission's licensing process as it pertains to this project, and Commission staff have received numerous requests for information about how members of the public might participate.

Consequently, Commission staff will hold two early evening public information meetings at New Milford and Falls Village, Connecticut, to familiarize the public with the Commission's hydropower licensing program.

Commission staff will present a brief overview of the Commission and its responsibilities, the status of this pending license application, a general description of the procedures Commission staff will use for the remainder of this license proceeding, and instructions on how members of the public may participate in this license proceeding.

While there will be an opportunity for questions and answers about Commission staff's presentation, all discussion of the merits of the pending application is strongly discouraged. At these meetings, Commission staff will entertain no questions pertaining to the merits of the pending application.

Interested persons are invited to attend either or both meetings scheduled as follows:

Tuesday, May 23, 2000, 7 to 9 p.m.,  
New Milford High School  
Auditorium, 25 Sunny Valley Road,  
New Milford, CT 06776

Wednesday, May 24, 2000, 7 to 9 p.m.,  
Housatonic Valley Regional High  
School Lecture Hall, 246 Warren  
Turnpike Road, Falls Village, CT  
06031

Please direct any questions regarding these meetings to (1) James T. Griffin, via telephone, (202) 219-2799, email james.griffin@ferc.fed.us, or by letter to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; or (2) John Whitefield via telephone (860) 665-3769, email whitjr@NU.COM, or by letter to the Connecticut Light & Power Company, P.O. Box 270, Hartford, CT 06141, or (3) both of these gentlemen.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-11488 Filed 5-8-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-260-000]

#### Texas Gas Transmission Corporation; Notice of Proposed Changes In FERC Gas Tariff

May 3, 2000.

Take notice that on April 28, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of June 1, 2000.

Texas Gas states that the proposed general rate case changes would increase revenues from jurisdictional transportation services by approximately \$81 million, based on the twelve-month period ended January 31, 2000, as adjusted, compared with the underlying rates.

Texas Gas states that the adjustments in rates are attributable to:

- (1) An increase in the utility rate base;
- (2) Increases in depreciation expense;
- (3) Increase in rate of return and related taxes; and
- (4) Revised system rate design quantities.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-11490 Filed 5-8-00; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 11243-016]

#### Cordova Electric Cooperative, Inc.; Notice of Availability of Final Environmental Assessment

May 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application requesting the Commission's approval of an application to amend the license for the Power Creek Project for the routing of a section of the licensed underground transmission line to an underwater route along the bottom of Eyak Lake. The Power Creek Project is located on Power Creek near Cordova, Alaska.

A Final Environmental Assessment (FEA) has been prepared by staff for the proposed action. In the FEA, Commission staff does not identify any significant impacts that would result from the Commission's approval of the proposed rerouting of a section of the project transmission to an underwater route. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA has been attached to and made a part of an Order Amending License, issued April 27, 2000, for the

Power Creek Project (FERC No. 11243-016). Copies of the FEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208-1371. The FEA also may be viewed on the Web at [www.ferc.fed.us/online/rims.htm](http://www.ferc.fed.us/online/rims.htm). Call (202) 208-2222 for assistance.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 00-11489 Filed 5-8-00; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6603-8]

### Agency Information Collection Activities: Proposed Collection: Comment Request; Investigations Into Compliance of Stationary Sources with the Accidental Release Prevention Program

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Investigations Into Possible Noncompliance of Stationary Sources with the Accidental Release Prevention Program, EPA ICR No. 1908.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Superfund Division, Office of Chemical Emergency Preparedness and Prevention, Region 5, United States Environmental Protection Agency, SC-6J, 77 W. Jackson Blvd., Chicago, Illinois 60604-3590.

**FOR FURTHER INFORMATION CONTACT:**  
Silvia Palomo, Telephone Number:  
(312) 353-2172, E-  
Mail: palomo.silvia@epa.gov

#### SUPPLEMENTARY INFORMATION:

*Affected entities:* Entities potentially affected by this action are major stationary sources of air emissions that have applied for or obtained a Title V operating permit.

*Title:* Investigations into Compliance of Stationary Sources with the Accidental Release Prevention Program

established in 40 CFR Part 68, EPA ICR No. 1956.01. This is a new collection.

**Abstract:** On June 20, 1996, EPA published risk management regulations mandated under the accidental release prevention provisions under the Clean Air Act Section 112(r)(7), 42 U.S.C. 7412(r)(7). These regulations were codified in 40 CFR Part 68. The intent of Section 112(r) is to prevent accidental releases to the air and mitigate the consequences of such releases by focusing prevention measures on chemicals that pose the greatest risk to the environment. The chemical accident prevention rule required owners and operators of stationary sources subject to the rule to submit a risk management plan by June 21, 1999 to EPA. The Office of Chemical Emergency Preparedness and Prevention (OCEPP), Superfund Division, Region 5, is responsible for implementing and enforcing the Risk Management Program. In order to fulfill its responsibilities as the implementing office, OCEPP will collect information from major stationary sources of air emissions to determine whether or not these sources are in compliance with the risk management program regulations. The information will be requested through certified mail and pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. 7414(a). Therefore, response to the information collection is mandatory.

Any information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The information collected will include the names of the regulated substances used, produced, or stored on-site; amount of the regulated substances; copies of inventory records; copies of Material Safety Data Sheets; capacity of the container which stores or handles the regulated substance; and the number of employees.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Burden Statement:** EPA estimates that a total of 2,000 respondents will receive the request for information. The total burden for the respondents for this collection of information is estimated to be 3,000 hours with an average of 1.5 hours per response and a labor cost of \$49. The responses will be one-time, and do not involve periodic reporting or recordkeeping. No capital or start-up expenses will be required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 28, 2000.

**William Munro,**

*Director, Superfund Division.*

[FR Doc. 00-11568 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6603-6]

### Clean Air Act Operating Permit Program; Petition for Objection to Proposed State Operating Permit for Exxon Chemical Americas' (Exxon) Polypropylene Unit Baton Rouge Polyolefins Plant Baton Rouge, East Baton Rouge Parish, Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on petition to object to State operating permit.

**SUMMARY:** This notice announces that the EPA Administrator has denied a petition to object to a proposed state operating permit issued by the Louisiana Department of Environmental Quality for Exxon's Chemical Americas proposed polypropylene unit at its Polyolefins Plant in Baton Rouge, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioners may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

**ADDRESSES:** You may review copies of the final order, the petition, and other supporting information at EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: <http://www.epa.gov/ttn/oarpg/t5pfr.html>.

**FOR FURTHER INFORMATION CONTACT:** Jole Luehrs, Chief, Air Permitting Section, Multimedia Planning and Permitting Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7250, or e-mail at [luehrs.jole@epa.gov](mailto:luehrs.jole@epa.gov).

**SUPPLEMENTARY INFORMATION:** The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Ms. Marylee Orr, Executive Director of the Louisiana Environmental Action Network (LEAN) submitted a petition to the Administrator on December 30, 1998, seeking EPA's objection to the title V operating permit issued for Exxon's proposed polypropylene unit at Exxon's polyolefins plant in Baton Rouge, Louisiana. The petition was submitted on behalf of the North Baton Rouge Environmental Association and LEAN (Petitioners). The petition objects to issuance of the Exxon permit on two grounds: (1) Alleged discrimination under Title VI of the Civil Rights Act; and (2) the Baton Rouge ozone

nonattainment area is not making reasonable further progress towards attainment, and that the additional emissions from the proposed polypropylene unit will adversely affect the ozone situation. Ms. Orr also submitted a letter supplementing the petition on behalf of LEAN on January 5, 1999, and another letter on March 1, 1999, requesting that the Exxon permit be reopened. The Region 6 Regional Administrator also addressed the second issue in a separate letter to the Petitioners.

On April 12, 2000, the Administrator issued an order denying the petition. The order explains the reasons for denying the Petitioners' claims.

Dated: April 28, 2000.

**Carl E. Edlund,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 00-11567 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6602-7]

### Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), Union Pacific Railroad Wallace-Mullan Branch

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement with the Union Pacific Railroad Company for recovery of certain response costs concerning the Union Pacific Railroad Wallace-Mullan Branch in northern Idaho. The settlement requires Union Pacific to pay a total of \$650,000 to the Hazardous Substance Superfund. The settlement includes a limited covenant not to sue pursuant to 42 U.S.C. 9607(a) and provides for contribution protection pursuant to 42 U.S.C. 9622(h). This administrative settlement will be superseded upon entry of a consent decree lodged on December 23, 1999, by the United States, State of Idaho, Coeur d'Alene, and Union Pacific, Case No. 99-606-N-EJL (D. Idaho), or will otherwise terminate three months from the effective date of the administrative settlement, unless otherwise agreed by the parties to this settlement. EPA will

consider public comments on the proposed administrative settlement for thirty days. EPA may withdraw from or modify this proposed settlement should such comments disclose facts or considerations which indicate this proposed settlement is inappropriate, improper, or inadequate.

**DATES:** Written comments must be provided on or before June 8, 2000.

**ADDRESSES:** Comments should be addressed to Clifford J. Villa, Assistant Regional Counsel, Environmental Protection Agency, Region 10, 1200 Sixth Ave., ORC-158, Seattle, Washington 98101 and refer to In the Matter of Union Pacific Railroad Wallace-Mullan Branch Notice of Proposed Administrative Settlement.

Copies of the proposed settlement are available from: Clifford J. Villa, U.S. Environmental Protection Agency, Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553-1185.

**FOR FURTHER INFORMATION CONTACT:** Clifford J. Villa at (206) 553-1185.

**Authority:** The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i).

**Sheila M. Eckman,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00-11570 Filed 5-8-00; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6604-1]

### Public Water System Supervision Program Revision for the State of South Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The State of South Dakota has revised its Public Water System Supervision (PWSS) Primacy Program. South Dakota's PWSS program, administered by the Drinking Water Program of the South Dakota Department of Environment and Natural Resources (DENR), has adopted regulations for lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141 Subpart I (56 FR 26460-26564). The Environmental Protection Agency (EPA) published a proposed primacy revision on August 16, 1999 at 64 FR 44521 and provided for public comment. The EPA also held a public hearing on December 2, 1999, in Badlands National Park,

South Dakota (64 FR 61109). No comments were received regarding PWSS program issues. The EPA has completed its review of South Dakota's primacy revisions and has determined that they are no less stringent than the NPDWR. EPA therefore approves South Dakota's primacy revisions for the Lead and Copper Rule.

Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see

**SUPPLEMENTARY INFORMATION, Item B.**

**DATES:** This primacy revision approval will be effective June 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P-W-MS), 999 18th Street, Suite 500, Denver, Colorado 80202-2466, telephone 303-312-6263.

**SUPPLEMENTARY INFORMATION:**

#### A. Why Are Revisions to State Programs Necessary?

States which have received primacy from EPA under the SDWA must maintain a safe drinking water program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their program and ask EPA to approve the revisions to their programs. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

#### B. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) in South Dakota?

South Dakota is not authorized to carry out its Public Water System Supervision program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian Reservations located within the State of South Dakota:

- Cheyenne River Indian Reservation.
- Crow Creek Indian Reservation.
- Flandreau Indian Reservation.
- Lower Brule Indian Reservation.
- Pine Ridge Indian Reservation.
- Rosebud Indian Reservation.
- Standing Rock Indian Reservation.
- Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to comments and more specifically identify Indian country areas in the State of South Dakota.

### C. Reviewing Documents and Public Comments

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region 8, Municipal Systems Unit, 999 18th Street (4th floor), Denver, Colorado 80202-2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, South Dakota 57501.

Dated: May 1, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*  
[FR Doc. 00-11565 Filed 5-8-00; 8:45 am]

BILLING CODE 6560-50-P

### FEDERAL COMMUNICATIONS COMMISSION

#### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 1, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before July 10, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418-0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0697.

*Title:* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Second Report and Order and Further Notice of Proposed Rulemaking Memorandum Opinion and Order on Reconsideration and Third Report and Order).

*Form Numbers:* FCC Forms 601, 602 and 603.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; individuals or households; not-for-profit institutions; and state, local or tribal Government.

*Number of Respondents:* 600.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement and recordkeeping requirement.

*Total Annual Burden:* 600 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* This collection is necessary to: lessen the administrative burden of licensees; determine the partitioned service areas and geographic area licensee's remaining service area of parties to an agreement; determine whether geographic area licensee and parties to agreements have met the applicable coverage requirements for their service areas; to determine whether the applicant is eligible to receive bidding credit as a small business; determine the real parties interest of any joint bidding agreements; and determine the appropriate unjust enrichment compensation to be remitted to the government.

*OMB Control Number:* 3060-0890.

*Title:* Settlement Agreements Among Parties in Contested Licensing Cases.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, individuals or households.

*Number of Respondents:* 45.

*Estimated Time Per Response:* 3 hours.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 115 hours.

*Total Annual Cost:* \$7,650.

*Needs and Uses:* This collection requires that parties to certain

settlement agreements obtain Commission approval before the settlement agreements take place. Each request for approval of a settlement must contain specific additional information and must also include a list of all applications and pleadings that were filed in the contested case or copies of them. Also, requests must include a summary of the contested case to include a full explanation of the issues raised in the case. Finally, the case involves an alleged violation of the rules, it must include either a waiver of a statement as to why a violation didn't or wouldn't occur.

*OMB Control Number:* 3060-0765.

*Title:* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Further Notice of Proposed Rulemaking).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; individuals or households; not-for-profit institutions; federal government; and state, local or tribal government.

*Number of Respondents:* 50,000.

*Estimated Time Per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 56,250 hours.

*Total Annual Cost:* \$25,101,875.

*Needs and Uses:* This proceeding will further establish a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which will promote efficient licensing and competition in the commercial mobile radio marketplace. The information will be used by Commission personnel to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Without such information, the Commission could not determine whether the licensee is operating in compliance with the Commission's rules.

*OMB Control Number:* 3060-0270.

*Title:* Section 90.443, Content of Station Records.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit, individual or households, not-for-profit institutions, and state, local and tribal government.

*Number of Respondents:* 57,410.

*Estimated Time Per Response:* .083 hours.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 4,765 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* This rule section requires that licensees maintain records for certain services. Section 90.443(a) requires that all stations, the dates and pertinent details of any maintenance performed on station equipment, and the name and address of the service technician who did the work. If all the maintenance is performed by the same technician or service company, the name and address need be entered only once in the station's records. Section 90.433(b) requires private land stations that are interconnected with the public switched telephone network, the licensee must maintain a detailed description of how interconnection is accomplished. When telephone service costs are shared, at least one licensee participating in the cost sharing arrangement must maintain cost sharing records. A report of the cost distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request. Maintenance records are used by licensee and/or Commission field personnel to note any recurring equipment problems that may pose an aviation hazard or cause interference.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00-11482 Filed 5-8-00; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 00-993]

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On May 5, 2000, the Commission released a public notice announcing the May 23 and 24, 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, SW., Suite 6A320, Washington, DC 20554. The fax

number is: (202) 418-2345. The TTY number is: (202) 418-0484.

**DATES:** Released: May 5, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, May 23, 2000, from 8:30 a.m. until 5:00 p.m., and on Wednesday, May 24, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW-C305, Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. 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, May 23, 2000*

1. Approval of April 25-26, 2000 meeting minutes.
2. North American Number Plan Administration (NANPA) Report.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Presentation of 1999 NANPA annual performance review.
4. Numbering Resource Optimization (NRO) Working Group Report.
5. Industry Numbering Committee (INC) Report.
6. Ad Hoc Voluntary UNP Study Group Report. Status of business rule model.
7. Local Number Portability Administration (LNPA) Working Group Report. Updates on wireless wireline integration; Problem Identification Management (PIM); NPAC/SMC release status, and Slow Horse.
8. Assumptions Issue Management Group (IMG) final report for NANC review and approval.
9. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update.
10. North American Billing and Collection (NBANC) Update.

*Wednesday, May 24, 2000*

11. Steering Group Report.
12. Industry Numbering Committee Report.
13. Number Pooling IMG Report. Update on May 2, 2000, meeting with FCC regarding the thousand block pooling administration technical requirements, Numbering Resource Optimization *Report and Order (NRO R&O)*, CC Docket 99-200 (paragraph 155).
14. Cost Recovery Working Group Report. Status of cost estimates (*NRO R&O* paragraph 56).
15. Public Participation (5 minutes each, if any).
16. Other Business.
17. Action Items and Decisions Reached.

Federal Communications Commission.

**Diane Griffin Harmon,**

*Deputy Chief, Network Services Division, Common Carrier Bureau.*

[FR Doc. 00-11645 Filed 5-8-00; 8:45 am]

**BILLING CODE 6712-01-U**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:30 a.m. on Wednesday, May 10, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of title 5, United States Code, to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 5, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00-11669 Filed 5-5-00; 1:20 pm]

**BILLING CODE 6714-01-M**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction**

This notice corrects a notice (FR Doc. 00-10965) published on page 25729 of the issue for Wednesday, May 3, 2000.

Under the Federal Reserve Bank of Dallas heading, the entry for Eggemeyer Advisory Corporation, WJR Corporation, Caste Creek Capital, LLC, and Castle Creek Capital Partners Funds I, Ila and Iib, LP, all of Rancho Santa Fe, California, is revised to read as follows:

A Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Eggemeyer Advisory Corporation, WJR Corporation, Castle Creek Capital, LLC, and Castle Creek Capital Partners Funds I, Ila, and Iib, LP, all of Rancho Santa Fe, California, to acquire more than 5 percent of the voting shares of Independent Bankshares, Inc., Abilene, Texas, and thereby indirectly acquire Independent Financial Corporation, Dover, Delaware, and First State Bank, N.A., Abilene, Texas.

In connection with this application, Applicants also have applied to acquire up to 35 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire voting shares of State National Bancshares Delaware, Inc., Dover, Delaware, State National Bank of El Paso, El Paso, Texas, State National Bank of West Texas, Lubbock, Texas, and United Bank & Trust Company, Abilene, Texas.

Comments on this application must be received by May 26, 2000.

Board of Governors of the Federal Reserve System, May 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-11474 Filed 5-8-00; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the

banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Community Investment Group, Ltd., Havana, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Havana National Bank, Havana, Illinois.

Board of Governors of the Federal Reserve System, May 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-11475 Filed 5-8-00; 8:45 am]

**BILLING CODE 6210-01-P**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Thoocon, Inc., Somerset, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First Commerce Bancorp, Inc., Somerset, Kentucky, and thereby indirectly acquire Cumberland Security Bank, Somerset, Kentucky.

2. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of SNB Corp., Greenville, Ohio, and thereby indirectly acquire Second National Bank, Greenville, Ohio.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Minnwest Corporation, Minnetonka, Minnesota; to acquire 100 percent of the voting shares of Minnwest Bank Sioux Falls, Sioux Falls, South Dakota, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00-11573 Filed 5-8-00; 8:45 am]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 00085]

#### Cooperative Agreement With the Association of Environmental Health Academic Programs; Notice of Availability of Funds

##### A. Purpose

The Centers for Disease Control and Prevention, (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the purpose of determining need and developing programs and curricula to strengthen State, local and tribal environmental health infrastructure; identifying and evaluating the effectiveness of core competencies to practice environmental health; preparing future professionals and educating current professionals to those competencies; and increasing the number of programs accredited by the National Environmental Health Science and Protection Accreditation Council (NEHSPAC).

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Environmental Health and Public Health Infrastructure. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>

##### B. Eligible Applicant

Assistance will be provided only to the Association of Environmental Health Academic Programs (AEHAP). No other applications are solicited.

AEHAP is the only organization for conducting this program because:

1. AEHAP is the only association which represents all the undergraduate and graduate institutions with academic programs of environmental health accredited by the NEHSPAC as well as those seeking accreditation.

2. AEHAP has the critical framework in place for developing the technical competence, managerial capacity, and leadership potential of accredited undergraduate and graduate programs in environmental health.

3. AEHAP is uniquely positioned to communicate and consult with all of the accredited undergraduate and graduate programs of environmental health because the accredited programs are a part of the existing membership.

4. AEHAP has a documented ability to build effective partnerships and collaborative relationships with federal health agencies and appropriate national organizations.

5. AEHAP provides the structure and experience for instituting programs that strengthen the environmental health system at the State and local levels.

6. AEHAP, through its affiliation with non-accredited universities teaching environmental sciences and environmental health, can encourage growth of qualified and accredited academic institutions to meet the demand for entry level environmental health professionals.

##### C. Availability of Funds

Approximately \$100,000 is available in FY 2000 to fund this Cooperative Agreement. It is expected that the award will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### D. Program Requirements

In conducting activities to achieve the purpose of this Cooperative Agreement, the recipient shall be responsible for the activities under 1. (Recipient Activities), and CDC shall be responsible for conducting activities under 2. (CDC Activities):

###### 1. Recipient Activities

a. Develop and implement a plan for addressing the national shortage of properly prepared and trained environmental health professionals.

b. Identify effective public health principles and incorporate into curricula of students entering the field of environmental health.

c. Identify capacity gaps and build the capacity of local environmental health programs to incorporate sound public health practice into their programs.

d. Develop and implement a plan to increase the number of accredited undergraduate and graduate programs in environmental health in areas of the country with a need for AEHAP prepared environmental health professionals by providing assistance to programs working to become accredited by the Environmental Health Science and Protection Accreditation Council.

e. Convene professional groups with diverse backgrounds to obtain their reviews and comments on plans and

practices to prepare future and current environmental health professionals.

f. Develop liaisons with key federal, State, local and tribal agencies and professional groups in areas of environmental health.

g. Evaluate the effectiveness of the project's activities.

###### 2. CDC Activities

a. Provide consultation, assistance, and guidance in planning and implementing program activities.

b. Assist in developing and implementing short- and long-term plans for improving environmental health practices at local communities.

c. Provide science-based collaboration and technical assistance in developing and implementing evaluation strategies for the program.

d. Facilitate collaboration between recipient and public and private sector agencies involved in environmental health at the national, regional, State and community levels.

e. Facilitate the exchange of program information among public and private agencies at all levels.

##### E. Application Content

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Provide a detailed budget and justification. A brief projection should be submitted that clearly separates direct and indirect costs.

##### F. Submission and Deadline

Submit the original and two copies of PHS 5161-1 (OMB Number 0937-0189). Forms are available at the following Internet address: [www.cdc.gov/...Forms](http://www.cdc.gov/...Forms), or in the application kit.

On or before June 26, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

**Deadline:** Application shall be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Application:* Application which does not meet the criteria in (a) or (b) above is considered a late application, will not be considered, and will be returned to the applicant.

### G. Evaluation Criteria

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Understanding of the problem (20 percent)

The applicant's ability to demonstrate an understanding of the nature of the problem to be addressed. This specifically includes description of the public health importance of the planned activities to be undertaken, and realistic presentation of proposed objectives.

2. Technical approach (25 percent)

The extent to which the applicant's proposal addresses: (1) An overall design strategy, including measurable time lines; and (2) management analysis of the data collected.

3. Ability to carry out the project (25 percent) Degree to which the applicant provides evidence of ability to carry out the proposed project and the extent to which the applicant documents demonstrated capability to achieve the purpose of this project.

4. Personnel (20 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

5. Plans for Administration (10 percent)

Adequacy of plans for administering the project.

6. Budget (not scored)

Itemized budget for conducting the project, along with justification, is provided and is reasonable and appropriate to the described project.

### H. Other Requirements

#### *Technical Reporting Requirements*

Provide CDC with the original plus two copies of:

1. Semi-annual progress report;  
2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR-7 Executive Order 12372 Review  
AR-10 Smoke-Free Workplace Requirements  
AR-11 Healthy People 2010  
AR-12 Lobbying Restrictions

### I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317 of the Public Health Service Act, [42 U.S.C. section 241 and 247b] as amended. The Catalog of Federal Domestic Assistance number is 93.283.

### J. Where To Obtain Additional Information

To obtain additional information, contact: Sonia Rowell, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (E-13) 2920 Brandywine Road, Room 3000 Atlanta, GA 30341 Telephone (770) 488-2724 Email address svp1@cdc.gov

For program technical assistance, contact: Patrick O. Bohan, National Center for Environmental Health, Centers for Disease Control and Prevention (F-48), 4770 Buford Highway NE, Atlanta, Georgia 30341, (770) 488-7303, E-mail address pfb3@cdc.gov.

The CDC Homepage address on the Internet is <http://www.cdc.gov>

Dated: May 3, 2000.

**Henry S. Cassell III,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00-11514 Filed 5-8-00; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 00076]

#### **Cooperative Agreement for Early Hearing Detection and Intervention (EHDI) Tracking, Research, and Integration With Other Newborn Screening Programs; Notice of Availability of Funds**

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2000 funds for a cooperative agreement program to promote the implementation and integration of State-based surveillance and tracking systems for Early Hearing Detection and Intervention (EHDI) and

other disorders detected by newborn screening.

The purpose of the EHDI program includes screening newborns for hearing loss, audiologic evaluation to identify infants with hearing loss, and early intervention for children identified. This program addresses "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area Vision and Hearing. For the conference copy of "Healthy People 2010," visit the internet site: <<http://www.health.gov/healthypeople>>.

#### B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Only one application from each State may be submitted.

Two levels of cooperative agreements will be awarded:

*Level I:* Eligible applicants for Level I funding are those that do not have an established State or regional centralized EHDI surveillance and tracking program, or are in the beginning stages of establishing their program and would like to expand or improve their existing surveillance and tracking program.

*Level II:* Eligible applicants for Level II funding are those that have an existing State or regional centralized EHDI population-based (*i.e.*, complete geographic coverage) surveillance and tracking program that includes data on at least 75 per cent of infants from a birth population of at least 30,000 live births per year. States with fewer births may form multi-State data collection regions in order to meet the eligibility requirements; these do not have to be composed of contiguous States. Level I applicants may belong only to one multi-State regional data collection site.

Applicants from multi-State regions must provide documentation from each State of their willingness to collaborate and pool data from each site in their proposed region. One State must be identified as the designated lead on a multi-State application. The lead State must submit the application and administer the award.

**Note:** Effective January 1, 1996, Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying

activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

### C. Availability of Funds

Approximately \$2,300,000 will be available in FY 2000 to fund up to 13 awards. It is expected that up to nine awards will be made to Level I applicants, ranging from \$100,000–\$150,000. It is expected that up to two awards will be made to Level II option 1 applicants and up to two awards will be made to Level II option 2 applicants. Level II awards are expected to range from \$250,000–\$350,000.

It is expected that awards will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to five years, depending on availability of funds. Funding estimates may vary and are subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and availability of funds.

#### Use of Funds

Project funds may not be used to supplant other available applicant or collaborating agency funds or to supplant State funds available for screening, diagnosis, intervention or tracking for hearing loss or other disorders detected by newborn screening. Project funds may not be used for construction, for lease or purchase of facilities or space, or for patient care.

### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1 (Recipient Activities' either Level I or Level II). CDC will be responsible for the activities listed under 2 (CDC Activities).

#### 1. Recipient Activities

##### Level I

a. Establish and implement a State or regional surveillance and data tracking system to assure minimal loss to follow-up by monitoring the status and progress of infants through the three components of the EHDI program (screening, identification, and intervention).

b. Develop standardized data collection and tracking methods (*i.e.*, linking with birth certificate files) and forms, and data analysis plan in collaboration with other recipients.

c. Collect standardized EHDI data (including the type of hearing loss and

type of intervention services) from appropriate sources, such as birthing hospitals, diagnostic centers and/or intervention programs.

d. Develop mechanisms to identify and collect standardized data on infants/children with late onset or progressive hearing loss.

e. Use State or regional EHDI data in order to obtain outcome data such as: unexpected clusters of infants with hearing loss in particular regions at particular times; unexpected differences in measure of EHDI screening performance between participating birthing hospitals; false positive rates; loss to follow-up rates.

f. Document concerns from parents and professionals about the EHDI process.

g. Collaborate with State programs such as Maternal and Child Health, Part C of the Individuals with Disabilities Education Act, private service programs, and advocacy groups to build a coordinated EHDI infrastructure.

h. Integrate with other screening programs that identify children with special health care needs such as newborn blood spot screening and birth defects surveillance.

i. Prepare and publish manuscript(s) which describes the tracking system, definitions, methodology, collaborative relationships, data collection, findings, and recommendations across sites. Collaboration with other participating sites is encouraged.

j. Develop an evaluation plan to monitor progress on activities and to assess the timeliness, completeness, and success of the project.

##### Level II

Level II applicants will be responsible for all required Level I activities, plus implementing either Option 1 or Option 2 below, but not both options.

*Option 1.* Under this option, Level II applicants will collaborate with other recipients to develop and participate in a common set of activities. Level II applicants are encouraged to develop collaborative relationships with universities. They will:

a. Share information and collaborate with other Level II recipients, and with other federal and national agencies (such as, but not limited to, Health Resources and Services Administration, National Institute on Deafness and other Communication Disorders, Directors of Speech and Hearing Programs in State Health and Welfare Agencies, Joint Committee on Infant Hearing, and advocacy groups) to develop a set of core research questions and analytic guidelines for one or more of the following areas:

i. costs of EHDI programs,  
ii. causes and associated factors for hearing loss,  
iii. benefits of early identification and intervention for children with hearing loss,

iv. psychological and family issues.

b. Collaborate with other award recipients to implement a common research and analytic plan and analyze data.

c. Collaborate with other Level II award recipients in an anonymized research data set. Data analysis will be conducted at the State and federal levels with the data being maintained at the individual applicant sites.

d. Collect biological samples for children identified with hearing loss.

*Option 2.* Under this option, Level II applicants will be responsible for activities that build on the integration of EHDI with other newborn screening and monitoring systems. They will:

a. Collaborate with programs that perform State newborn blood spot screening to identify an annual birth cohort of infants for further monitoring. Each program will select two conditions to include in their cohort; either PKU or galactosemia as one condition, and either congenital hypothyroidism or hemoglobinopathies as the other.

b. Develop a plan that is integrated with the EHDI tracking system to determine the effectiveness of the program in identifying and tracking infants with the selected conditions.

c. Develop a plan to annually document the services received and the condition (*i.e.*, medical and developmental complications) for each affected child included in the cohorts.

d. Collaborate with other Level II/Option 2 award recipients to develop a data system for the cohorts that can be integrated with other newborn screening activities and can serve as a model for other State programs.

#### 2. CDC Activities

a. Provide technical assistance as needed on the design, development, and evaluation methods and approaches used for State-based EHDI tracking and surveillance.

b. Provide technical assistance as needed on the development of research questions and analytic guidance;

c. Provide technical assistance as needed for the collection and analysis of data across sites.

d. Facilitate collaborative efforts to compile and disseminate program results through presentations and publications.

### E. Application Content

Use the information in the Program Requirements, Application Content,

Evaluation Criteria, and Other Requirements sections to develop the application content. Forms are in the application kit. Applications will be evaluated on the criteria listed, so it is important to follow them in describing the program plan. The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities.

The application must contain the following:

**Cover Letter:** A one-page cover letter should state the Level and Option for which the applicant is applying and explain how the applicant fulfills eligibility requirements.

**Abstract and Table of Contents:** A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should clearly state which level of activities the applicant is applying for: Level I, Level II—Option 1, or Level II—Option 2. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization structure. The abstract should precede the Program Narrative. A table of contents that provides page numbers for each of the following sections should follow the abstract (all pages must be numbered).

**Budget Justification:** The budget should be reasonable, clearly justified, and consistent with the intended use of the agreement funds. The applicant must include a detailed first-year budget justification with future annual projections. Budgets should include costs for travel for at least one project staff person to attend two two-day meetings. The applicant should provide a budget justification for each budget item. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection.

**Narrative:** The narrative should be no more than 25 double-spaced pages for Level I applicants and no more than 35 double-spaced pages for Level II applicants, printed on one side, with one inch margins, and unreduced font (12 pitch). The narrative must contain the following sections:

- a. Understanding the Problem and Current Status
- b. Goals and Objectives
- c. Description of Program and Methodology

- d. Evaluation Plan
- e. Collaborative Efforts
- f. Staffing and Management System (One-page CV or resume for each key personnel must be included in an attachment)
- g. Organizational Structure and Facilities (Must include an organizational chart)
- h. Human Subjects Review

#### **F. Submission and Deadline**

##### *Letter of Intent*

A letter of intent (LOI) is requested to enable CDC to determine the level of interest in the announcement. The LOI should specify the level (Level I or Level II, and the option if applying for Level II funding) for which the applicant is applying. Include name, address, and telephone number. The LOI is requested on or before June 6, 2000. Submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

##### *Application*

Submit the original and two copies of PHS 5161-1 (OMB Number 0937-0189) on or before July 6, 2000 to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

##### *Deadline*

Applications shall be considered as meeting the deadline if they are either:

- (a) Received on or before the deadline date; or
- (b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

##### *Late Applications*

Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

#### **G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

##### *1. Understanding the Problem (15%)*

- a. Extent to which the applicant has a clear, concise understanding of the

requirements and purpose of the cooperative agreement;

- b. Extent to which the applicant understands the challenges, barriers, and problems associated with developing and implementing an EHDI tracking and surveillance program;

- c. Extent to which the applicant describes the need for an EHDI program in their respective State(s) or the current status of their respective State(s) existing EHDI program: Number of infants/children with hearing loss; number of infants born, number of birthing hospitals with and without UNHS programs; number of infants screened, identified and referred to intervention; protocol for screening and referral, including informed consent information; description of EHDI tracking and surveillance system (if any exists); description of other relevant tracking, surveillance systems, or registries in the State and linkages with these systems or plans to link; description of diagnostic facilities and intervention services available in the State for infants/children with hearing loss;

- d. Extent to which applicant shows willingness to integrate EHDI surveillance and tracking system with other newborn screening program activities.

##### *2. Goals and Objectives (10%)*

- a. Extent to which applicant clearly describes the short- and long-term goals and objectives of the project;

- b. Extent to which applicant's goals and objectives are consistent with the stated purpose of this announcement.

- c. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation and justification when representation is limited or absent.

##### *3. Description of Program and Methodology (35%)*

- a. Extent to which applicant describes target region and number of births/year in that region;

- b. Extent to which applicant addresses all activities of Program Requirements relevant to their chosen Level/Option;

- c. Extent to which applicant describes the methods to be used to carry out the activities and provides a time line which includes personnel and other resources to complete the project.

**4. Evaluation Plan (15%)**

Extent to which applicant describes an evaluation plan that will monitor progress, and assess timeliness, completeness, and success of the project;

**5. Collaborative Efforts (10%)**

a. Extent to which applicant describes their methods for collaboration with (and includes written assurances) from hospitals, diagnostic centers, and intervention services;

b. Extent to which collaborative efforts with other screening programs are documented;

c. (Level II only) Extent to which applicant is willing to work collaboratively with other agencies and recipients to develop multi-site research questions and analytic guidelines. If additional research questions are proposed in order to address local concerns, extent to which the applicant provides a rationale and need for choosing those questions, a clear description of the methodology to be used, the resources available or needed to carry out the project;

d. (Level II only) Extent to which applicant describes their plan for integrating the EHDI program with other screening programs such as blood spot screening and birth defect registries, (Letters of agreement and cooperation from collaborating screening programs should be included). Applicants must state their willingness to work collaboratively and to modify their projects if necessary in order to accommodate multi-site projects for the purpose of integration and standardization efforts.

**6. Staffing and Management System (10%)**

a. Extent to which key personnel have skills and experience to develop and implement an EHDI tracking and surveillance system;

b. Extent of the managerial ability to coordinate the tracking, surveillance, and research, and integration components of the project;

c. Extent to which expertise in abstracting screening, identification, and intervention records are demonstrated;

d. Extent to which expertise in epidemiologic methods, public health surveillance, data management and computer programming is demonstrated;

**7. Organizational Structure and Facilities (5%)**

Extent to which organization structure and facilities/space/equipment are

adequate to carry out the activities of the program.

**8. Human Subjects Requirements (Not Scored)**

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

**9. Budget (Not Scored)**

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

**H. Other Requirements**

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports, no more than 30 days after the end of the report period.
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application kit.

- AR-1 Human Subjects Requirements
- AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR-7 Executive Order 12372 Review
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-11 Healthy People 2010
- AR-12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. sections 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other documents may be downloaded through the CDC homepage on the Internet at <http://www.cdc.gov> (click on "Funding"). Refer to Program Announcement 00076 when you request information.

For business management technical assistance, contact: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: 770-488-2718, E-mail address: [mij3@cdc.gov](mailto:mij3@cdc.gov).

For program technical assistance, contact: June Holstrum, Ph.D., Early Hearing Detection and Intervention Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop F-15, Atlanta, GA 30341-3717, Telephone number: 770-488-7361, E-mail address: [Jholstrum@cdc.gov](mailto:Jholstrum@cdc.gov).

Dated: May 3, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00-11513 Filed 5-8-00; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention**

**[Program Announcement 00077]**

**Innovative Technology Development Grant for the Assessment of Micronutrient Status in Humans Notice of Availability of Funds****A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for an innovative technology development grant program for the development of appropriate and sustainable technologies for the assessment of micronutrient status in humans. This program addresses "Healthy People 2010," a national activity to reduce morbidity and mortality and improve quality of life. This announcement is related to the focus areas of Nutrition and Overweight; Maternal, Infant, and Child Health; Diabetes; Mental Health and Mental Disorders; Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to stimulate the development, commercialization, and application of innovative technologies which are rugged, portable, easy to operate and

maintain, cost effective, and sustainable. The program will assess micronutrient status in people at risk for micronutrient malnutrition living in developing countries. The program will also provide assessments of rural and inner-city populations of the developing and developed world, including domestic programs in the United States, such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Such technologies may also have applicability in clinical laboratory and medical clinic settings.

#### B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, businesses, small minority businesses, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Public Law 104-65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

#### C. Availability of Funds

Approximately \$500,000 is available in FY 2000 to fund up to three awards. It is expected that the average award will be \$175,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, site visits, and the availability of funds.

#### D. Programmatic Interest

Programmatic interest is focused on:

1. Research and development leading to appropriate technology for assessing individual and/or population status with regard to the micronutrients of iodine, iron, vitamin A, and folic acid. The objective of the technology should be aimed at detecting or monitoring deficiencies (and/or excesses) of these micronutrients by direct or indirect measurements of the micronutrients or their metabolites in blood or urine, functional changes related to the deficiency (or excess) of the micronutrient, detection of deviations

from typical individual patient characteristics (such as radiant or absorbed electromagnetic energy, expired volatile compounds, changes in visual perception, changes in neurologic function), or other approaches using technologies that range from very simple, such as dipstick or blood spot type tests, to "smart" biosensor or "nano-lab" technologies.

2. Development of the technology from research and development, through product testing, clinical evaluation, production, marketing, and technical support. Research which results ONLY in findings of academic interest with no practical application to the objectives of the grant will not be considered.

#### E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application must be submitted unstapled and unbound.

Applications for research and development grants should include technology that:

1. Estimates the nutritional status of individuals or populations with regard to one or more of the micronutrients targeted by this program. Is accurate and traceable to an accepted accuracy base or reference standard. Is sufficiently precise and reproducible to be useful for epidemiologic purposes and/or for the management of individual cases.

2. Ability to operate under field conditions of varied temperature and humidity, is easy to operate and maintain, is economical, generates minimal disposables and/or biohazard waste, consumes minimal reagents, requires minimal training or operator expertise, and can be sustained.

3. Demonstrates portability, compact, energy efficient and, if external energy is required, is capable of operating from one or more power sources such as batteries, fuel cells, solar cells, or "house current."

4. Is non-invasive or minimally invasive, or requires very small amounts of blood, urine, saliva, or other accessible body fluids. If bodily fluids are required for the proposed technology, applicant must describe sample collection techniques, biohazard waste disposal, and specimen transport and storage requirements.

5. Demonstrates adequate specificity and sensitivity for the required purposes.

6. Demonstrates the capability to provide a hard copy or electronic output to document patient ID together with assayed values, if the technology used has electronic processing capability.

7. Demonstrates an understanding of the value of collaboration with other researchers, partnerships, contracts, venture capital relationships, etc., to accomplish the objectives of this project.

#### F. Submission and Deadline

Submit the original and five copies of PHS 398 (OMB Number 0925-0001). On or before July 10, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

- a. Received on or before the deadline date; or
- b. Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in a or b above are considered late applications, will not be considered, and will be returned to the applicant.

#### G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by a Special Emphasis Panel appointed by CDC.

##### 1. Technical Expertise and Research Capacity (30 percent)

The applicant's ability to plan, implement, and conduct a successful research and development program aimed at clinical or nutritional measurement systems including the development and validation of analytical methods and/or instruments, and the ability to guide such development efforts from concept, through bench model or demonstration-of-concept prototype, to prototype for field/clinical testing and approval, to manufacture, production, marketing, distribution and support. (If applicant does not intend to carry the project from initial development through final production and marketing, a plan for how these steps will be accomplished through partnerships, or marketing/licensing of the technology to others should be described.)

## 2. Technical Approach (30 percent)

a. The overall technical merit of the research plan and the soundness and scientific validity of the proposed technologies. The research plan must be thoroughly described and must include a detailed explanation of the operating principles of the technology to be developed, and the rationale for selecting the nutritional status marker to be measured.

b. The adequacy of the research plan includes the extent to which the applicant has adequately addressed all issues described and how well the evaluation plan can be used to effectively measure progress towards the stated objectives.

c. The background of the application, the critical evaluation of existing knowledge, and the specific identification of the knowledge gaps which the application intends to address.

## 3. Understanding the Problem (20 percent)

Applicant's understanding of the nature and difficulty of nutritional assessments, and the special challenges imposed in field settings for sample collection, storage and transport, maintenance, supply, and technical support, and sustainability.

a. The clinical, nutritional, biochemical, and practical basis for the appropriate selection of measurement parameters for the micronutrient(s) addressed by the applicant.

b. The applicant's demonstration of an awareness and understanding of strengths and weaknesses of previous work related to the proposed technology.

## 4. Program Personnel (10 percent)

The extent to which the application has described:

a. The qualifications and commitment of the applicant including training and experience in chemistry, biochemistry, biomedical engineering, medicine, nutrition, or other relevant scientific disciplines.

b. The qualifications of the proposed key staff.

c. Detailed allocations of time and effort of staff devoted to the project.

d. Information on how the applicant will develop, implement, evaluate progress, and administer the program.

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and

ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

## 5. Collaboration (5 percent)

Collaboration is encouraged to accomplish the research objectives in a timely manner. The applicant should demonstrate the ability to collaborate and/or form partnerships with appropriate research centers, manufacturers, or commercial interests to conduct the described research and development plan.

## 6. Plans to Publicize the Research Effort (5 percent)

The applicant should provide an explanation of plans to encourage the publication of the research findings or otherwise make the information available to the public as soon as is feasible within the limits of protecting proprietary interests of the developer.

## 7. Human Subjects Protection (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

## 8. Budget (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds.

## H. Other Requirements

### Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. semiannual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR-1 Human Subjects Requirements

AR-2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR-3 Animal Subjects Requirements

AR-9 Paperwork Reduction Act Requirements

AR-10 Smoke-Free Workplace Requirements

AR-11 Healthy People 2010

AR-12 Lobbying Restrictions

## I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317 of the Public Health Service Act, [42 U.S.C. section 241(a) and 247(b), as amended.] The Catalog of Federal Domestic Assistance number is 93.283.

## J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at <http://www.cdc.gov> (click on funding). Please refer to Program Announcement Number 00077 when requesting information. To receive an application kit, call 1-888-GRANTS (1-888-472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Sonia V. Rowell, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: (770) 488-2724, Email address: [svp1@cdc.gov](mailto:svp1@cdc.gov)

For program technical assistance, contact: Dayton T. Miller, Ph.D., Centers for Disease Control and Prevention, 4770 Buford Highway (F-18), Atlanta, Georgia 30341, Telephone: (770) 488-4452, Email address: [dtm1@cdc.gov](mailto:dtm1@cdc.gov)

Dated: May 3, 2000.

**Henry S. Cassell, III,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00-11515 Filed 5-8-00; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Mental Health and Community Safety Initiative for American Indian/Alaska Native Children, Youth and Families

**AGENCY:** Indian Health Service.

**ACTION:** Notice of funding availability for competitive grants for the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families.

**SUMMARY:** The Indian Health Service (IHS) announces the development of the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families and the availability of competitive grants under this Initiative for fiscal year (FY) 2000. Grants under this Initiative will be administered by the following Federal agencies: (1) The IHS and Substance Abuse and Mental Health Services Administration (SAMHSA), United States Department of Health and Human Services (HHS); (2) Office of Community Oriented Policing Services (COPS) and Office of Juvenile Justice and Delinquency Prevention (OJJDP), United States Department of Justice (DOJ); and (3) Office of Elementary and Secondary Education (OESE), United States Department of Education (ED).

The Initiative will provide tribes and tribal organizations with easy-to-access assistance in developing innovative strategies that focus on the mental health, behavioral, substance abuse, and community safety needs of AI/AN young people and their families through a coordinated Federal grant process. Total funding available for the four grant programs involved in the Initiative is \$4.13 million.

Coordination of this effort has been initiated through the White House Domestic Policy Council and was announced at the June 7, 1999, White House Conference on Mental Health.

The primary purpose of the Initiative is to promote Indian youth mental health, education, and substance abuse-related (alcohol as well as drug abuse) services, and to support juvenile delinquency prevention and intervention through the creation and implementation of culturally sensitive programs. Grant funds will be available beginning in FY 2000 and a coordinated grant program will continue over a three-year period.

The Initiative will support tribes in providing a range of youth support services and programs to address the mental health and related needs of AI/AN young people and their families through various settings within the community, such as in the home, in the schools, in violence prevention education programs, in health care treatment programs, and in the juvenile justice system.

Interagency programs included in this effort have been selected based upon

their combined potential to address comprehensively mental health, juvenile justice, substance abuse, and related issues. As part of this Initiative, tribes are encouraged to promote coordination and collaboration among the local programs that serve young people in their communities.

Tribes may apply for one or more of the grant programs included in the Initiative to address their programmatic needs. In submitting an application or applications, tribes should identify the complex community issues involved and demonstrate how the proposed application(s) will provide for a comprehensive approach to addressing and attempting to solve these issues.

#### **Government Agencies Providing Grants Funding**

*A. HHS Agencies Providing Grant Funding for the Initiative are: the IHS and the SAMHSA*

##### **1. IHS**

The IHS announces the availability of \$1.13 million in FY 2000 for competitive grant awards for the AI/AN Mental Health Grants Program. Under this program, tribes and tribal organizations will be considered for two types of projects:

- Mental Health Projects will provide demonstration projects that serve the AI/AN children and youth involved with the juvenile justice system and their families. These projects should be targeted at providing culturally relevant systems of care resulting in reduced hospitalization, better case-management, and increased family participation in the treatment process.

- Child Abuse and Neglect Projects will provide projects that develop screening, evaluation, and referral systems in collaboration with tribal child protection teams for AI/AN children and youth in the juvenile justice system who have been abused and/or neglected. The grantee would be required to initiate the development of prevention programs targeting children and families at risk for abuse and neglect.

This program is included in the Catalog of Federal Domestic Assistance under #93.228. The deadline for receipt of applications is June 2, 2000.

For information regarding the IHS program, contact Lahoma Roebuck, Division of Clinical and Preventive Services, Indian Health Service, 5600 Fishers Ln., Rm. 6A-20, Rockville, MD 20857, (301) 443-1068, Fax: (301) 594-6213, e-mail: LRoebuck@hqe.ihs.gov

##### **2. SAMHSA**

The Center for Mental Health Service in partnership with the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention has available approximately \$450,000 in FY 2000 for 1-year grant awards to tribal and urban Indian communities for the AI/AN Youth Priority Initiative. The average award may range from \$50,000 to \$150,000 depending on the size of the identified service population of the applicant.

This Initiative supports the adoption of exemplary practices related to the delivery and organization of services for AI/AN youth with serious emotional and substance abuse problems. Applicants must identify an exemplary practice specific to the needs of the AI/AN youth, and demonstrate the involvement of the tribal leadership, as well as education; law enforcement; and substance abuse, health, social services, and mental health entities in the community. Examples of an exemplary practice include: wrap-around, multi-systemic treatment, or case management services to improve access to services, increase family voice in the system of care, and reduce institutional placements; mentoring programs; culturally specific programs to restore rites of passage and intergenerational support; and gathering of Native American programs to convene youth serving programs; and peer counseling programs.

This program is described in the Catalog of Federal Domestic Assistance under #93.230. Deadline date for receipt of applications is May 10, 2000.

For information regarding the SAMHSA program, contact Jill Shepard Erickson, MSW Public Health Advisor, Child, Adolescent and Family Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Suite 11 C-16, Parklawn Building, 5600 Fishers Ln., Rm. 6A-54, Rockville, MD 20857, (301) 443-1333, Fax: (301) 443-3693, e-mail: jerickso@samhsa.gov

*B. DOJ Agencies Providing Grant Funding for the Initiative are: the COPS and the OJJDP*

##### **1. COPS**

The COPS announces the availability of \$1.5 million for the Mental Health and Community Safety Initiative for AI/AN Children, Youth and Families. Grants will be awarded for salaries and benefits for new police officers, as well as law enforcement training and equipment, including technology and vehicles, for new and existing police officers. It is expected that resources

funded under this program (officer positions, equipment and/or training) will be used to meet the mental health, behavioral, and substance abuse needs for Native American youth and their families and provide a range of youth support services and programs both in the community and in the school arena. Sworn police officers may be deployed as Community Resource Officers or as School Resource Officers to engage in community policing activities. Salaries and benefits cover a 3-year period. A 25% local match requirement may be waived on the basis of demonstrated fiscal distress. All applicants must submit a written plan to retain their COPS-funded officer positions after Federal funding has ended.

Grants funded under the COPS initiative will be supplemented with \$50,000 provided by OESE, ED, from FY 2000 Safe and Drug-free Schools and Communities Act National Program funds. These funds will be awarded to the recipients of COPS funds under this initiative and will be used to support alcohol, tobacco, and other drug or violence prevention activities in school-based settings to be implemented by police officers supported by COPS funds.

This program is described in the Catalog of Federal Domestic Assistance under #16710. The deadline for receipt of applications is May 26, 2000.

Contact for the COPS program: June Kress, Senior Policy Analyst, Office of Community Oriented Policing Services (COPS), U.S. Department of Justice, 1100 Vermont Avenue, NW 9th Floor, Washington, DC 20530, (202) 616-2915, Fax: (202) 616-9612, e-mail: [june.kress2@usdoj.gov](mailto:june.kress2@usdoj.gov).

## 2. OJJDP

The purpose of the Tribal Youth Program (TYP) is to support and enhance tribal efforts for comprehensive delinquency prevention and control and for juvenile justice system improvement for Native American youth. In FY 2000, \$1 million of the total appropriation for the TYP has been set aside to provide mental health services to youth in Tribal and/or State juvenile justice systems. The programs or projects to be funded must provide mental health services through one or more of the following activities:

- (1) Reduce, control, and prevent crime and delinquency both by and against tribal youth;
- (2) Provide interventions for court-involved tribal youth;
- (3) Improve tribal juvenile justice systems; and
- (4) Provide prevention programs focusing on alcohol and drugs.

The description for this program is located in #16.731 in the Catalog of Federal Domestic Assistance. The deadline for receipt of applications for this TYP Mental Health Initiative is June 15, 2000.

For more information, please contact: Chyrl Andrews, Acting Tribal Youth Manager, Office of Juvenile Justice and Delinquency Prevention (OJJDP), State Relations and Assistance Division, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531, 202-307-5924, Fax: (202) 307-2819, e-mail: [andrewsc@ojp.usdoj.gov](mailto:andrewsc@ojp.usdoj.gov)

### Distribution of Grant Application Kits

The IHS, SAMHSA, COPS, and OJJDP are preparing a single, consolidated grant application package that will include the program announcement and application kit for each of the four grant programs described above. The consolidated application package will be distributed in early May 2000. A package will be sent directly to (1) the Tribal Chairman of every federally recognized tribe; (2) the Director of every tribal organization as defined by section 4(1) of Pub. L. 93-638, Indian Self-Determination and Education Assistance Act, as amended, and (3) the Director of every tribal health department.

To request additional application packages, please contact: Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Clearinghouse, 2277 Research Boulevard, Rockville, Maryland 20850, Reference: White House Initiative on Mental Health (Solicitation #410), Telephone: 1-800-683-8736.

Dated: April 24, 2000.

**Michel E. Lincoln,**

*Deputy Director.*

[FR Doc. 00-11480 Filed 5-8-00; 8:45 am]

BILLING CODE 4160-16-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration (SAMHSA)

#### Notice of Meetings

Pursuant to Public Law 92-463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in May and June 2000.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17-

89, Rockville, Maryland 20857. Telephone: 301-443-2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (6) and 5 U.S.C. App.2, § 10(d).

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* May 15-19, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* May 15-19, 2000, 8:30 a.m.-5 p.m./adjournment.

*Panel:* Targeted Capacity Expansion, PA 00-001.

*Contact:* Peggy Thompson, Lead Review Administrator, Room 17-89, Parklawn Bldg. Telephone: 301-443-9912 / FAX: 301-443-3437.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* May 23-26, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* May 23-26, 2000.

*Panel:* Centers for the Application of Prevention Technologies, SP 00-005.

*Contact:* Peggy Riccio, Review Administrator, Room 17-89, Parklawn Building, 301-443-9996 and FAX 301-443-3437.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* June 5-8, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* June 5-8, 2000, 8:30 a.m.-5 p.m./Adjournment.

*Panel:* State Incentive Program, SP 00-004.

*Contact:* Stanley Kusnetz, Review Administrator, (301) 443-3042, Parklawn Building, Room 17-89.

*Committee Name:* SAMHSA, Special Emphasis Panel I (SEP I).

*Meeting Dates:* June 12-15, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* June 12-15, 2000, 8:30 a.m.-5 p.m./Adjournment.

*Panel:* Community Action Grants for Service Systems Change, CMHS PA 00-003.

*Contact:* Raquel Crider, Review Administrator, (301) 443-5063, Parklawn Building, Room 17-89.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* June 19-23, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* June 19-23, 2000, 8:30 a.m.-5:00 p.m./Adjournment.

*Panel:* Community Action Grants for Service Systems Change, CSAT PA 00-002.

*Contact:* Peggy Riccio, Review Administrator, Parklawn Building, Room 17-89, (301) 443-9996.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* June 19-23, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* June 19-23, 2000, 8:30 a.m.-5:00 p.m./Adjournment.

*Panel:* Community Treatment Program, CSAT, PA 99-050.

*Contact:* Danielle Johnson, Review Administrator, (301) 443-6092, Parklawn Building, Room 17-89.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* June 26-30, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* June 26-30, 2000, 8:30 a.m.-5:00 p.m./Adjournment.

*Panel:* Youth Violence Cooperative Agreement SM 00-005.

*Contact:* Michael Kosciński, Review Administrator, Room 17-89, Parklawn Building, (301) 443-6094.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 1, 2000.

#### **Coral Sweeney,**

*Review Specialist, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 00-11533 Filed 5-8-00; 8:45 am]

**BILLING CODE 4162-20-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Substance Abuse and Mental Health Services Administration (SAMHSA)**

#### **Notice of Meeting**

Pursuant to Public Law 92-463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June and July 2000.

A summary of the meeting may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17-89, Rockville, Maryland 20857. Telephone: (301) 443-2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets

and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3),(4), and (6) and 5 U.S.C. App. 2, § 10(d).

*Committee Name:* SAMHSA Special Emphasis Panel II.

*Panel:* Technical Assistance & Logistical Support 270-00-7077.

*Meeting Date:* June 1-2, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

*Closed:* June 1, 2000, 8:30 a.m.-5:00 p.m.; June 2, 2000, 8:30 a.m.-Adjournment.

*Contact:* Ferdinand Hui, Room 17-89, Parklawn Building, Telephone: (301) 443-9919 and FAX (301) 443-1587.

*Panel:* State Alcohol & Other Drugs (AOD) Systems Technical Review Project 270-00-7069.

*Meeting Date:* July 10-11, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

*Closed:* July 10, 2000 8:30 a.m.-5:00 p.m.; July 11, 2000, 8:30 a.m.-Adjournment.

*Contact:* Ferdinand Hui, Parklawn Building, Room 17-89, Telephone: (301) 443-9919 and FAX: (301)443-1587.

*Panel:* Indefinite Delivery & Indefinite Quantity, 277-00-6049.

*Meeting Date:* June 19-23, 2000.

*Meeting Place:* Bethesda Marriott, 51512 Pooks Hill Road, Bethesda, Maryland 20814.

*Closed:* July 19-23, 2000, 8:30 a.m.-5:00 p.m.

*Contact:* Ferdinand Hui, Parklawn Building, Room 17-89, Telephone: (301) 443-9919 and FAX (301) 443-1587.

Dated: May 2, 2000.

#### **Coral Sweeney,**

*Review Specialist, SAMHSA.*

[FR Doc. 00-11534 Filed 5-8-00; 8:45 am]

**BILLING CODE 4162-20-P**

## **DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-4560-C-06]

### **FY 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance; Technical Corrections for CDTA EDI, HOPE VI, HOPWA, Housing Counseling, ROSS, Section 202 and Section 811 Programs; and Extension of Application Due Dates for EDI and Two ROSS Initiatives**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Super Notice of Funding Availability (SuperNOFA) for HUD Grant Programs; Technical Correction.

**SUMMARY:** On February 24, 2000, HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. This document makes certain technical corrections to the following programs: Economic Development Initiative (EDI); HOPE VI; Housing Counseling; Housing Opportunities for Persons With AIDS (HOPWA); Resident Opportunity and Self-Sufficiency (ROSS); Section 202 Supportive Housing for the Elderly; and Section 811 Supportive Housing for Persons with Disabilities.

This document also extends the application due date for EDI and for two of the ROSS Program initiatives.

**DATES:** Except for the extension of the application due date for EDI and for two of the ROSS Program initiatives, all application due dates remain as published in the **Federal Register** on February 24, 2000. The application due date for the Outreach and Training Assistance Grants (OTAG) was extended to May 31, 2000, by notice published in the **Federal Register** on April 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** For the Programs listed in this notice, please contact the office or individual listed in the "For Further Information" heading in the individual program section of the SuperNOFA, published on February 24, 2000.

**SUPPLEMENTARY INFORMATION:** On February 24, 2000 (65 FR 9322), HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. The FY 2000 SuperNOFA announced the availability of approximately \$2.424 billion in HUD program funds covering 39 grant categories within programs operated and administered by HUD offices and Section 8 housing voucher assistance.

This notice published in today's **Federal Register** makes certain corrections and clarifications to the funding availability announcements of the following programs: Community Development Technical Assistance (CDTA); Economic Development Initiative (EDI); HOPE VI Revitalization and Demolition; Housing Counseling; Housing Opportunities for Persons With AIDS (HOPWA); Resident Opportunity and Self-Sufficiency (ROSS); Section

202 Supportive Housing for the Elderly; and Section 811 Supportive Housing for Persons with Disabilities.

## II. Technical Corrections

A summary of the technical corrections that will be made by this document are as follows. The page numbering shown in bracket identifies where the individual funding availability announcement that is being corrected can be found in the February 24, 2000 SuperNOFA, and the page numbering in parentheses identifies where the specific language that is being corrected can be found in the published SuperNOFA.

### Community Development Technical Assistance (CDTA) [Page 9389]

HUD revises the first paragraph of Section VI (Application Submission Requirements) to correct the list of application submission requirements for the Housing Opportunities for Persons With AIDS (HOPWA) Technical Assistance component of this funding. The Budget Summary, described in Section VI.(H), applies to HOPWA and was inadvertently included in the list of items not applicable to HOPWA. (See page 9397, first column at top)

### Economic Development Initiative (EDI) [Page 9789]

This notice extends the application due date for EDI from May 24, 2000, to June 13, 2000.

HUD is removing the limitation or "cap" on the maximum EDI award for a single regional economic development project application. (See page 9793, second column.) Due to their potentially larger size and regional impact, HUD determined that market conditions and the regional economic development project proposed should determine the appropriate amount of an award for a single regional economic development project application. Therefore, HUD will not apply a specific cap on the size of an award for a single regional economic development project application. However, the cap on the maximum EDI award for each general economic development project application remains. In addition, the overall limitation on awards for all regional economic development project applications approved under the FY 2000 SuperNOFA remains the same at \$10,000,000.

In addition to this change, HUD corrects certain incorrect cites in the EDI funding availability announcement. On page 9790, in the first column, in the first full paragraph, the references to Section IV.(D) and Section VI.(D)(2) should be Section VI.

On page 9793, in the third column, numbered paragraph (4), the reference to Section IV.(E)(1) should be Section IV.(F)(1).

On page 9794, second and third column, the reference to Section V.(A)(4) in these columns should be Section IV(F) and Section V.(A)(3).

### HOPE VI Revitalization and Demolition Program [Page 9599]

HUD revises the second sentence of paragraph (e) of Section III.(C)(1) which addresses the appropriate replacement homeownership assistance to clarify that the conditions for this assistance are limited to the following (1) HUD's approval of a homeownership proposal under section 24(d)(1)(j) of the Act; and (2) the 80 percent of area median income limitations. (See page 9601, third column.) HUD also corrects the statutory cite in Section VII.(A)(1)(b). The correct cite is section 537(c), not section 537(b). (See page 9618, second column.) Additionally, HUD revises Section IV(D)(1)(b) to clarify the matching requirement for HOPE VI grant funds used for community and supportive services.

### Housing Counseling [Page 9519]

HUD further addresses the post-award process under Section II (Amount Allocated) by describing the award instrument to be executed by grantees and accompanying documentation. A new paragraph (4) is added to this section.

### Housing Opportunities for Persons With AIDS (HOPWA) [Page 9867]

HUD corrects the chart in Appendix A that addresses "Non-Eligible Areas" found on page 9880. For the State of Maryland, the chart should read: State of Maryland (outside of Baltimore, Washington DC, and Wilmington, EMSA). For the State of New Hampshire, the chart should read: State of New Hampshire (outside of Boston, EMSA). HUD also corrects the HOPWA Project Budget Form in Appendix C (page 9891) to remind applicants that the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) apply to housing rehabilitation, repair and conversion activities over \$200,000.

### Resident Opportunity and Self-Sufficiency (ROSS) [Page 9697]

HUD extends the application due date for the Capacity Building or Conflict Resolution and Resident Service Delivery Models initiatives to June 15, 2000.

The provision on "Ineligible Activities," paragraph (3) of Section

III.(D)(3) (see page 9702, middle column) contains an incorrect cross-reference to Section III.(C)(7). The correct reference is to Section III.(C)(4).

Under the program description and listing of eligible activities for the Resident Service Delivery Model, HUD inadvertently omitted the paragraph on eligible administrative expenses that appears in the other initiatives. This provision is added as a new paragraph (h) on page 9704, first column, right before paragraph (5) on "Ineligible Activities."

In Section VI.(A) which addresses application submission requirements for all applicants, HUD clarifies that for Service Coordinator renewal grantees, they are not required to submit the ROSS Fact Sheet or ROSS Program Summary. (See page 9708, second column.)

In Section VI.(B) (Application Submission Requirements for RMBD Applications) to remove the last sentence of paragraph (B)(2) that states that submission of a memorandum of understanding (MOU) is not required as part of the application submission. (See page 9709, first column at top). This document is required to be submitted with the RMBD application, as stated earlier in the paragraph.

### Section 202 Supportive Housing for the Elderly [Page 9901]

In Section V.(C), HUD corrects the order in which selection will be made out of the national residual funds. (See page 9908, third column, last paragraph before Section V.(D).) This correction is necessary because the national residual funds will be used first to fund two projects not funded in FY 1999 due to HUD error instead of to first restore units cut by the Multifamily Program Centers and Multifamily Hubs in order for them to fund the projects out of their FY 2000 Section 202 allocation. Additionally, the notice corrects an inaccurate definition of minority neighborhood. Since applications are to be rated on the suitability of sites from the standpoints of promoting a greater choice of housing opportunities for minority elderly persons/families and affirmatively furthering fair housing, it is important for sponsors to be able to accurately identify neighborhoods. (See page 9909, third column.)

### Section 811 Supportive Housing for Persons With Disabilities [Page 9929]

As with the Section 202 Program, HUD corrects an inaccurate definition of minority neighborhood. (See page 9938, first column.) Under this program, since applications are to be rated on the suitability of sites from the standpoints

of promoting a greater choice of housing opportunities for minority persons with disabilities and affirmatively furthering fair housing, it is important for sponsors to be able to accurately identify neighborhoods. Additionally, HUD corrects the address and telephone number of the Atlanta Multifamily Hub. The address was printed incorrectly in the Appendix A of the Section 811 Program. (See page 9944.)

Accordingly, in the Super Notice of Funding Availability for Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance for Fiscal Year 2000, notice document 00-4123, beginning at 65 FR 9322, in the issue of Friday, February 24, 2000, the following corrections are made:

*1. Community Development Technical Assistance (CDTA) Section, Beginning at 65 FR 9389*

- On page 9396, third column, continuing on page 9397, first column, the first paragraph of Section VI (Application Submission Requirements) is corrected to read as follows:

In addition to the forms, certifications and assurances listed in Section II(G) of the General Section of the SuperNOFA (collectively referred to as the "standard forms"), your application must, at a minimum, contain the following items (except that the following paragraphs (C), (D), (E), (F), and (G) do not apply to HOPWA TA applicants). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining forms can be found as Appendix B to this CD-TA program section of the SuperNOFA.

*2. Economic Development Initiative (EDI) Section, Beginning at 65 FR 9789*

- On page 9789, in the first column, under "Program Overview," corrects the paragraph on "Application Deadline" to read as follows:

*Application Deadline.* June 13, 2000.

- On page 9789, in the first column, under Section I, HUD corrects the first paragraph titled "Application Due Date" to read as follows:

*Application Due Date.* Please submit your completed applications (one original and two copies) on or before 12:00 midnight, Eastern time, on June 13, 2000, to the addresses shown below. *In your transmittal letter, please indicate whether you are applying for funding as a general economic development project or a regional economic development project.*

- On page 9790, first column, HUD corrects the first six sentences of the first full paragraph in this column to read as follows:

One application shall be submitted for each regional economic development project which must consist of two parts: Part I, Lead Applicant's Submission, must include a Cooperative Agreement which stipulates a workplan for the regional economic development project. The Cooperative Agreement must be executed by the chief executives of the participating jurisdictions. The Cooperative Agreement workplan must indicate the overall purpose, objectives and accomplishments expected from carrying out the project. Your application shall also include the Standard Form 424, the required certifications signed by the lead applicant, and other materials as described in Section VI of this program section of this SuperNOFA. The lead applicant shall be responsible for coordinating actions of the workplan with respect to timing and scheduling. Part II of the application, Participating Members' Plans, shall contain discrete EDI and Section 108 loan guarantee requests by each participating member identifying activities to be financed by the jurisdiction with grant funds and guaranteed loan proceeds and shall meet the other requirements described more fully in Section VI. \* \* \*

- On page 9793, second column, HUD corrects paragraph (2) in Section IV.(F) to read as follows:

(2) HUD will cap EDI awards at a maximum of \$2 million for general economic development projects. Any application in excess of \$1 million may be reduced below the amount requested by the applicant if HUD determines that such a reduction is appropriate.

- On page 9793, third column, HUD corrects numbered paragraph (4) to read as follows:

(4) In the event you are awarded an EDI grant that has been reduced below the original request (e.g. the application contained some activities that were ineligible or there were insufficient funds to fund the last competitive application at the full amount requested or there were technical deficiencies that could not be resolved), you will be required to modify your project plans and application to conform to the terms of HUD's approval before HUD will execute a grant agreement. HUD also will proportionately reduce or deobligate the EDI award if you do not submit approvable Section 108 loan guarantee applications on a timely basis (including any extension authorized by HUD) in the amount required by the EDI/108 leveraging ratio which will be approved by HUD as a special condition of the EDI grant award (see Section IV.(F)(1) above of this program section of the SuperNOFA). Any modifications

or amendments to your application approved pursuant to this SuperNOFA, whether requested by you or by HUD, must be within the scope of the approved original EDI application in all respects material to rating the application, unless HUD determines that the revised application remains within the competitive range and is otherwise approvable under this SuperNOFA competition.

- On page 9794, in the second column, under Section V.(A)(2), numbered paragraph (a) is corrected to read as follows:

(a) All acceptable EDI grant applications for general economic development projects will be separately ranked in order of points assigned with the applications receiving more points ranking above those receiving fewer points. Acceptable economic development applications must meet the threshold requirements stipulated in the General Section of this SuperNOFA and be complete as required by the Submission requirements of this program section of this SuperNOFA. General economic development projects will be funded in rank order until the total aggregate amount of the applications funded is equal to up to \$14.1 million (subject to the Department's discretion described in Section IV.(F) and Section V.(A)(3)).

- On page 9794, at the bottom of the second column and continuing to the third column, the second full paragraph under Section V.(A)(2)(b) is corrected to read as follows:

Economic development projects may include projects where the participating partners invest in one project with each participating partner's role (e.g. funding, planning) being explained to demonstrate how the activity is both necessary to further the regional objectives while accruing reasonable benefits to residents of the partner's jurisdiction. An economic development project might also include projects carried out within the boundaries of each participating member's jurisdiction where the effect of carrying out the project activities in multiple jurisdictions will create a regional synergy that will cause a reduction to or elimination of the regional problem or condition (e.g., high poverty levels, high unemployment). The workplan must describe such jurisdictional efforts and the extent to which their combined efforts accomplish the objectives of the regional economic development project. Regional economic development projects will be funded in rank order until the total aggregate amount of the applications funded is equal to up to \$10 million (subject to the Department's

discretion described in Section IV.(F) and Section V.(A)(3);

**3. HOPE VI Revitalization and Demolition Program Section, Beginning at 65 FR 9599**

- On page 9601, third column, the introductory paragraph of paragraph (e) in Section III.(C)(1) is corrected to read as follows:

(e) Appropriate replacement homeownership assistance for displaced public housing residents or other low-income families. Subject to HUD's approval of a homeownership proposal under section 24(d)(1)(f) of the Act, and a family's meeting the 80 percent of Area Median Income (AMI) low-income family limitations under the 1937 Act, assistance may include: \* \* \*

- On page 9606, Section IV(D)(1)(b) is corrected to read as follows:

(b) *Additional Community and Supportive Services Match*. In addition to supplemental amounts provided in accordance with subparagraph (a) above, if you are selected for funding and propose to use more than 5 percent of your HOPE VI grant for community and supportive services (you may use up to 15 percent of your grant for such services), you must certify that you will provide supplemental funds from sources other than HOPE VI in an amount equal to the difference between 5 percent of the HOPE VI grant and the amount used for community and supportive services. You will make this certification by signing the HOPE VI Revitalization Applicant Certifications. The certification form is included in Part V of the HOPE VI Application Kit, and the text of the certifications is included as Appendix A to this HOPE VI section of the SuperNOFA, below.

- On page 9618, second column, the introductory paragraph of paragraph (b) in Section VII.(A) is corrected to read as follows:

(b) *Priority Group 2*: A HOPE VI Demolition grant application that targets units included in a Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant

application deadline date, or targets units that, at HUD's sole determination under section 537(c) of the Public Housing Reform Act of 1998, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section IV(F)(1) of this HOPE VI section of the SuperNOFA, above. \* \* \*

**4. Housing Counseling Section, Beginning at 65 FR 9519**

On page 9529, second column, a new paragraph (4) is added after paragraph (3) to read as follows:

(4) *Award Instrument*. All Housing Counseling Program awards shall be made on a cost reimbursement basis in accordance with the requirements in OMB Circulars A-87, Cost Principles for State and Local Governments and Indian Tribal Governments; and OMB Circular A-122, Cost Principles for Non-Profit Organizations, as applicable to your organization; and the administrative requirements established in OMB Circular A-102, which was implemented by 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments; OMB Circular A-110, which was implemented by 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations); and OMB Circular A-133 which was implemented by 24 CFR parts 84 and 85). If you receive an award you are also required to ensure that any sub-recipients also comply with the requirements in these circulars.

After selection, but prior to award of funds you will be required to submit to HUD either:

- A copy of your most recent audit conducted by the cognizant Federal agency or a Independent Public Accountant which states that: (i) Your financial accounting system meets the federal requirements for fund control

and accountability as required by these OMB Circulars and (ii) establishes an indirect cost rate for your organization; or

- A certification from an Independent Public Accountant or the cognizant Federal agency government auditor, stating that (i) your financial accounting system meets the federal requirements for fund control and accountability as required by these OMB Circulars and (ii) establishes an indirect cost rate for your organization.

Your submission should include the name and telephone number of the Independent Auditor or the cognizant Federal Auditor. HUD cannot award funds to an organization unless its financial management system meets Federal requirements for funds control and accountability.

If your organization does not have an established indirect cost rate, you will be required to develop and submit an indirect cost proposal to HUD or the cognizant Federal Agency as applicable, for determination of an indirect cost rate which will govern your award. Funds will not be awarded until the determination of the Indirect Cost Rate.

**5. Housing Opportunities for Persons With AIDS (HOPWA) Section, Beginning at 65 FR 9867**

- On page 9880, the chart shown on Appendix for "Non-Eligible Areas" is corrected to read as follows for the States of Maryland and New Hampshire (the information concerning the other states is correct).

State	NON-eligible areas
MD .....	State of Maryland (outside of Baltimore, Washington, DC, and Wilmington, EMSA)
NH .....	State of New Hampshire (outside of Boston, EMSA).

- On page 9891, the second row of the HOPWA Project Budget Form is corrected to read as follows:

Eligible activity	Project funding		
	A. HOPWA	B. Other	C. Total
2. Rehabilitation, Repair, and .....	Conversion*	\$	\$

**6. Resident Opportunity and Self-Sufficiency (ROSS) Section, Beginning at 65 FR 9697**

- On page 9697, in the first column, the Application Deadline in the "Program Overview" section is corrected to read as follows:

*Application Deadline*. June 15, 2000, for Resident Management and Business Development; June 15, 2000, for Capacity Building or Conflict Resolution;

June 15, 2000, for Resident Service Delivery Models; and

After publication of this SuperNOFA grant renewals will be accepted until all funds are awarded for Service Coordinators.

- On page 9697, in the first column, the first paragraph in Section I that

addresses "Application Due Date", is corrected to read as follows:

*Application Due Date.* Your completed application (one original and two copies) is due on or before 12:00 midnight, Eastern time, on the following application due dates to HUD Headquarters at the address shown below.

June 15, 2000, for Resident Management and Business Development;

June 15, 2000, for Capacity Building or Conflict Resolution;

June 15, 2000, for Resident Service Delivery Models; and

After publication of this SuperNOFA, grant renewals will be accepted until all funds are awarded for Service Coordinators.

See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mail application, express mail, overnight delivery, or hand-carried).

- On page 9702, second column, the paragraph designated as paragraph "(3)" on "Ineligible Activities" is corrected to read as follows:

(3) *Ineligible Activities.* Ineligible activities are the same as those listed in Section III(C)(4) of this program section of the SuperNOFA, above.

- On page 9704, first column, before the paragraph designated as paragraph "(5)" on "Ineligible Activities" a new paragraph (h) is added to read as follows:

(h) *Administrative costs.* Administrative costs may include, but are not limited to purchase of furniture, office equipment and supplies, quality assurance, travel and utilities. Administrative costs must not exceed 20% of the total grant costs.

- On page 9708, under Section VI (Application Submission Requirements), the last paragraph in the first column that continues into the second column, is corrected to read as follows

All applicants, except for applicants that are Service Coordinator renewal grantees, must include the following information regardless of the category under which they are applying for funds. Service Coordinator renewal grantees are not required to submit items (2) and (3), the ROSS Fact Sheet, and ROSS Program Summary, respectively.

- On page 9708, third column, continuing to page 9709, first column, the second paragraph in Section VI.(B)(2) is corrected to read as follows:

(2) Your application must contain a signed Memorandum of Understanding (MOU) between the RA and PHA which

describes the specific roles, responsibilities and activities to be undertaken by all parties to the MOU. Your MOU, at a minimum must identify the principal parties (i.e. the name of the PHA and RA, the terms of agreement), expectations or terms for each party, and indicate that the agreement pertains to the support of your grant application. This document is the basis for the foundation of the relationship between the RA and PHA. The MOU must be precise and outline the specific duties and objectives to be accomplished under the grant. All MOUs must be finalized, dated and signed by duly authorized officials of both the RA and PHA upon submission of the application.

7. *Section 202 Supportive Housing for the Elderly (Section 202 Program) Section, Beginning at 65 FR 9901*

- On page 9908, in the third column, the last paragraph of Section V.(C) is corrected to read as follows:

Funds remaining after these processes are completed will be returned to Headquarters. HUD will use these funds first to fund Metropolitan Low Income Housing and CDC, Inc., a FY 1999 application in the jurisdiction of the Columbia, SC Multifamily Program Center, and White Sands Manor, a FY 1999 application in the jurisdiction of the Jacksonville, FL Multifamily Hub. These projects were not funded in FY 1999 due to HUD error. Second, HUD will use these funds to restore units to projects reduced by HUD offices as a result of the instructions for using residual funds. Third, HUD will use these funds for selecting applications based on field offices' rankings beginning with the highest rated application nationwide. Only one application will be selected per HUD office from the national residual amount (except for the Columbia, SC Multifamily Program Center and Jacksonville, FL Multifamily Hub which are already receiving additional selections as described above). If there are no approvable applications in other HUD offices, the process will begin with the selection of the next highest rated application nationwide. This process will continue until all approvable applications are selected using the available remaining funds.

- On page 9909, third column, under Rating Factor 3 (Soundness of Approach), the third subparagraph under paragraph (b)(ii) is corrected to read as follows:

—In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population. The term

"nonminority area" is defined as one in which the minority population is lower than 10 percent.

8. *Section 811 Supportive Housing for Persons With Disabilities (Section 811 Program) Section, Beginning at 65 FR 9929*

- On page 9938, first column, under Rating Factor 3 (Soundness of Approach), the third subparagraph under paragraph (b)(ii) is corrected to read as follows:

— In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population. The term "nonminority area" is defined as one in which the minority population is lower than 10 percent.

- On page 9944, first column, under Appendix A, the address for the Atlanta Office is corrected to read as follows: Atlanta Office, 40 Marietta Street—Five Points Plaza, Atlanta, GA 30303–2806, (404) 331–5001.

Dated: May 1, 2000.

Saul N. Ramirez, Jr.,

Deputy Secretary.

[FR Doc. 00–11552 Filed 5–8–00; 3:45 pm]

BILLING CODE 4210–32–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Proposed Information Collections; Request for Comment

**ACTION:** Notice of proposed information collection; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) plans to submit the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the address provided below.

**DATES:** Consideration will be given to all comments received on or before July 10, 2000.

**ADDRESSES:** Comments and suggestions on the requirements should be sent to Rebecca A. Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; 703/358–2287; or electronically to Rebecca.Mullin@fws.gov

**FOR FURTHER INFORMATION CONTACT:**

Sylvia Cabrera at 4401 North Fairfax Drive, Suite 140, Arlington, VA 22203; 703/358-1842; or electronically to Sylvia\_Cabrera@fws.gov

**SUPPLEMENTARY INFORMATION:** The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities (see 5 CFR 1320.8(d)). We are seeking clearance from the OMB to collect information in conjunction with carrying out our responsibilities under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777-777K) commonly referred to as the Dingell-Johnson Act, and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 699-699i) commonly referred to as the Pitman-Robertson Act. Under these acts, as amended, almost \$400 million in grants are provided annually to States for projects to support sport fish and wildlife management and restoration, including the acquisition and improvement of aquatic resources, fishing access, fish stocking, and the acquisition and improvement of wildlife management areas, facilities, and access. Grants also are provided for aquatic education and hunter education, maintenance of completed projects, and research into the problems affecting fish and wildlife resources. Those projects help ensure that the American people have adequate opportunities for wildlife-related recreation. To assist in carrying out its responsibilities, the Service has sponsored national surveys of fishing and hunting at about 5 year intervals since 1955. The Bureau of the Census conducts the survey for the Service. The survey data are needed to allow the Service to effectively administer the Sport Fish and Wildlife Restoration Grant Programs, and to help States develop project proposals and conservation programs that meet the needs of their populations. The survey collects information on the number of people participating in wildlife-related recreation, the number of days and expenditures spent on those activities. Survey data are needed to provide comparable state level information on existing recreation demands and to provide a basis for projecting future demands to effectively meet the needs of the American people. The information is needed to evaluate the effectiveness of existing programs in meeting those needs, formulate new policies, develop programs, and support budget proposals and legislation for the

benefit of sport fish and wildlife restoration. Data are needed to evaluate the status and trends of recreational uses, as well as the values and benefits, of fish and wildlife resources. The comprehensive comparable state-level data provided by the survey are not available from other sources. The Service is requesting a three year term of approval for this information collection. 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.

We invite your comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

*Title:* 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR).

*Approval Number:* New.

*Survey Form Numbers:* FH-2 (Screen), FH-3 (Sportsmen), FH-4 (non-consumptive) Questionnaires.

*Description and Use:* The 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation will be the 10th one conducted since 1955. It is conducted every 5 years and is requested by the States through the International Association of Fish and Wildlife Agencies. It will be conducted by the Bureau of the Census using computer-assisted telephone or in-person interviews. A sample of sportsmen and non-consumptive participants will be selected from a household screen. Sample persons will be asked about their participation and expenditures. Three detailed interviews will be conducted during the survey year. The 2001 FHWAR Survey will be similar in scope to past surveys. It will generate information identified as priority data needed by the Federal and State fish and wildlife agencies responsible for administering the Sport Fish and Wildlife Restoration grant programs. Accordingly, the 2001 FHWAR Survey will be a comprehensive data base of fish and wildlife-related recreation activities such as freshwater, saltwater, and Great Lakes fishing; and big game, small game, migratory bird, and other animal hunting. Wildlife watching (non-consumptive) activities include wildlife observation, feeding, and photographing

around the home and on trips away from home. Information is collected on days of participation, the species of animals sought, and how much money was spent on trips and for equipment. Information on the characteristics of participants include age, income, sex, education, race, and residency. The survey data has State level reliability. Federal and State fish and wildlife agencies use information from the survey as a basis to formulate management and policy decisions related to sport fish and wildlife restoration. Participation patterns and trend information assist in identifying present and future needs and demands. The information is used for planning the acquisition, development, and enhancement of fish and wildlife resources for the benefit of wildlife-related recreation. Data on expenditures, economic evaluation, and participation are used by land managing agencies to assess the value of fish and wildlife-related uses of natural resources. Expenditure information is used by States to estimate the economic impact of wildlife-related recreation expenditures on their economies and to support the dedication of tax revenues to support fish and wildlife restoration programs. The information collected on resident saltwater fishing will assist coastal States in determining the proper ratio for allocating funds between freshwater and saltwater projects as required by the Federal Aid in Sport Fish Restoration Act, as amended. The information is not readily available elsewhere because few States have saltwater licenses or conduct their own surveys. If the 2001 FHWAR Survey data were not available it would impair the ability of those States to meet their obligations under the Act.

In summary, the information collection is needed to assist the Fish and Wildlife Service and the State fish and wildlife agencies in administering the Sport Fish and Wildlife Restoration grant programs. The 2001 FHWAR Survey will provide up-to-date information on the uses and demands for wildlife-related recreation resources, trends in the uses of those resources, and a basis for developing and evaluating programs and projects to meet existing and future needs. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

*Frequency of Collection:* Household screen interviews and the first detailed sportsmen and non-consumptive participant interviews will be

conducted April–June 2001. The second detailed interviews will be conducted September–October 2001. The third and last detailed interviews will be conducted January–March 2002.

*Description of Respondents:* Individuals.

*Estimated Completion Time:* We estimate the average completion time per respondent to be about 7 minutes for the screen and 15 minutes for the detailed interviews. A respondent will average 2 interviews during the survey period.

*Number of Respondents:* It is estimated that there will be 80,000 total respondents.

Dated: April 28, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–11223 Filed 5–8–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit amendment to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

#### Permit Number TE 809227–13

*Applicant:* BHE Environmental, Inc., Cincinnati, Ohio.

The applicant requests a permit to take (collect) 33 fish species and 68 mussel species throughout their ranges in U.S. Fish and Wildlife Regions 3, 4 and 5. Activities are proposed for studies to identify populations of listed fish and mussel species and to develop methods to minimize or avoid project related impacts to those populations. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of

such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 2, 2000.

**T.J. Miller,**

*Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 00–11542 Filed 5–8–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for Construction of Commercial and Residential Development on 110 Acres of the 446-acre Comanche Canyon Ranch in Travis County, Texas

**SUMMARY:** Comanche Canyon Ranch, Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit numbers TE–004683–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*), Tooth Cave pseudoscorpion (*Tartarocreagriss texana*), Kretschmarr Cave mold Beetle (*Texamaurops reddelli*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Tooth Cave spider (*Neoleptoneta myopica*), and Tooth Cave ground beetle (*Rhadine persephone*). The proposed take would occur as a result of the construction of commercial and residential structures with associated streets and utilities on 110 acres of the 446-acre Comanche Canyon Ranch, Travis County, Texas.

The Service has completed the review of the draft Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received on or before June 8, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Christina Longacre, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–004683–0 when submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Christina Longacre at the above U.S. Fish and Wildlife Service Office, Austin, TX.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the “taking” of endangered species such as the golden-cheeked warbler, Bone Cave harvestman, Tooth Cave spider, Bee Creek Cave harvestman, Tooth Cave pseudoscorpion, Tooth Cave ground beetle and the Kretschmarr Cave mold beetle. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

#### Applicant

Comanche Canyon Inc. plans to construct residential and commercial structures with associated streets and utilities in Travis County, Texas. This action will eliminate approximately 26 acres of habitat and indirectly impact 37 additional acres of golden-cheeked warbler habitat. The Applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by preserving a minimum of 213 acres on-site.

If any voids are encountered that contain the listed karst invertebrates, the Applicant will minimize and mitigate any impacts determined by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present would not add preserve

acreage and management to the area and was not economically feasible.

**Domenick R. Ciccone,**

*Acting Regional Director, Region 2,  
Albuquerque, New Mexico.*

[FR Doc. 00-11518 Filed 5-8-00; 8:45 am]

**BILLING CODE 4510-55-U**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-040-00-1060-HI]

#### Notice of Intent To Gather Excess Wild Horses During Calendar Year 2000

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The Bureau of Land Management (BLM), Rock Springs Field Office, prepared an environmental assessment for wild horse gathering inside and outside of wild horse herd management areas in 1999. The proposed action to gather excess wild horses to appropriate management levels was approved in a decision record on July 14, 1999. Gathering of excess wild horses to appropriate management levels was not completed in 1999. BLM is scheduled to continue gathering operations in the year 2000. The environmental assessment and decision record are available for review at the Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming. It is also available via the world wide web at: <http://www.wy.blm.gov/currentnews/wildhorses/WILDHORSEADOPTION.HTML> The planned gathering period will extend from July 15, 2000 until inclement weather prevents gathering operations. Up to 800 wild horses may be removed from four wild horse herd management areas including Great Divide Basin, White Mountain, Little Colorado, and Salt Wells Creek. Excess wild horses outside of the herd management areas in the North Baxter/Jack Morrow hills areas may also be removed.

**FOR FURTHER INFORMATION CONTACT:** John (Stan) McKee, Field Manager, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901 (307-352-0201).

Dated: May 3, 2000.

**John S. McKee,**

*Field Manager.*

[FR Doc. 00-11519 Filed 5-8-00; 8:45 am]

**BILLING CODE 4310-22-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Proposed Kykotsmovi Sewer Lagoon—Public Facility Project

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Notice of application for grant funding; public comment period for the Hopi Tribe's request to fund the Village of Kykotsmovi Sewer Lagoon—Public Facility Project.

**SUMMARY:** OSM is announcing its receipt of a grant application from the Hopi Abandoned Mine Land (AML) Program, in Kykotsmovi, Arizona. The Hopi Tribe is requesting \$200,000 from the Abandoned Mine Reclamation Fund to pay the cost of upgrades to the existing wastewater infrastructure within the Village of Kykotsmovi on the Hopi Indian Reservation. In its application, the Hopi Tribe proposes paying for a percentage of the total construction cost as a public facility project (PFP) to offset various socioeconomic impacts to the community that is impacted by the mining of Hopi coal. The Chairman of the Hopi Tribe has determined that this project is necessary to prevent an imminent threat to human health and safety.

This notice describes when and where you may read the Grant Application that requests funding for the Village of Kykotsmovi—Sewer Lagoon Public Facilities Project. It also sets the time period during which you may send written comments on the request to OSM.

**DATES:** We will accept written comments until 4 p.m., d.s.t., June 8, 2000.

**ADDRESSES:** You should mail or hand-deliver your written comments to Willis L. Gainer, Albuquerque Field Office Director, at the address shown below.

You may preferably read the Hopi Tribes Grant Application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. However, OSM will send one free copy of the grant application to you if you contact OSM's Albuquerque Field Office.

Willis L. Gainer, Director,  
Albuquerque Field Office, Office of  
Surface Mining Reclamation and  
Enforcement, 505 Marquette Avenue  
NW., Suite 1200, Albuquerque, New  
Mexico 82601-1918.

**FOR FURTHER INFORMATION CONTACT:** Willis L. Gainer, Telephone: (505) 248-5070.

#### SUPPLEMENTARY INFORMATION:

##### I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) Program. The purpose of the AMLR Program is to reclaim and restore lands and waters that were adversely affected by past mining. The AMLR Program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States or Indian Tribes to submit AMLR plans to OSM. On behalf of the Secretary, OSM reviews those plans and considers any public comments received. If OSM determines that a State or Indian Tribe has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State or Tribe exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State or Tribe may apply to OSM for money to fund specific projects that will achieve the goals of its approved plan. OSM follows the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

##### II. Background on the Hopi AML Plan

The Secretary of the Interior approved the Hopi Tribe's AML plan on June 28, 1988. General background information on the Hopi Tribe AML Plan, including the Secretary's findings and disposition of comments, can be found in the June 28, 1988, **Federal Register** (53 FR 25262). Subsequent actions concerning the Hopi Tribe's AML Plan can be found at 30 CFR 756.16, 756.17, and 756.18. Effective June 9, 1994, (59 FR 29721) the Director approved the Hopi Tribe's certification that it had addressed all known coal-related impacts on the Hopi Reservation that were eligible for funding.

As a result, the Hopi Tribe may submit annual grant requests for AML funds to address eligible lands, waters, and facilities impacted by noncoal mining and construction of new facilities in accordance with the provisions of Section 411 of SMCRA.

The effect of the Director's concurrence is to authorize the Hopi Tribe to use its AML funds for noncoal reclamation and construction of Public Facilities or Community Impact Projects in areas of the Hopi Reservation impacted by coal development, mining, or processing as provided in section 411 of SMCRA.

On March 31, 1997, OSM approved an amendment (62 FR 15112) to the Hopi AML Plan to add language at Section II, A(1) to provide for reclamation of any newly discovered coal hazards after certification. In the same **Federal Register** notice, OSM approved revisions to Section I, A of the Hopi AML Plan which state that the purpose of the Hopi AML plan is to: "Protect the health, safety, and general welfare of members of the Hopi Tribe and members of the general public from the harmful effects of past coal mining practices and past mineral mining and processing practices." In addition, OSM approved revised language that provides for other purposes as well such as to: (1) Address adverse effects of mining and processing practices on public facilities; (2) provide for public facilities in communities impacted by coal or other mineral mining and processing practices; and (3) address needs for activities or public facilities related to the coal or minerals industry on Hopi lands impacted by coal or minerals development.

Section II, B—Noncoal Reclamation After Certification, of the Hopi AML Plan states at paragraph (f): "Notwithstanding the requirements in paragraph (c) of this section, where the Chairman of the Hopi Tribe determines there is a need for activities or construction of specific public facilities related to the coal or mineral industry on Tribal lands impacted by coal or minerals development, and the Director of OSM concurs in such a need, the Tribe may submit to OSM a grant application requesting funds to carry out such activities or construction."

Paragraph (g) of this Section II, B states that the Hopi Tribe must specifically demonstrate: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on the coal or minerals industry on Hopi Indian lands; (3) the availability of funding from other sources and its percentage of the total costs; (4) Documentation from other State, Tribal, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency; (5) the impact on the Tribe, the public, and the minerals industry if the activity or

facility is not funded; (6) The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from damages caused by past mining activities; and, (7) an analysis and review of the procedures used by the Tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the Tribe.

In other words, once a State or Indian Tribe certifies that it has addressed all remaining abandoned coal mine problems and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411(b), (e), and (f), of SMCRA.

Tribal law or regulations that apply to the proposed Kykotsmovi Sewage Lagoon Public Facilities Project funding request include the approved Hopi AML Plan and Hopi Water Code.

### **III. The Hopi Tribe's Request for Funding 15% of the Cost of the Kykotsmovi Sewer Lagoon Public Facilities Project**

In accordance with Section II (B)(f) of the Hopi AML Plan, the Hopi Tribe AML Program submitted to OSM a grant application dated February 2, 2000. In the application, the Hopi Tribe asked for \$200,000 to pay for approximately 15 percent of the of the total cost of \$1,222,059 for this jointly funded proposal to upgrade the Kykotsmovi Sewer Lagoon Facility. Other potential funding agencies include the Indian Health Service, Village of Kykotsmovi, Hopi Tribe, Bureau of Reclamation, the Hopi Tribal Housing Authority (HUD) and other sources.

The proposed project will expand the existing sewer system by installing new sewer lines and appurtenances to homes not presently serviced by the community sewer and construct a wastewater treatment and disposal facility to enlarge the system's treatment capability; and divert two-thirds of the waste water flow to the West lagoon in order to relieve overload conditions and abandonment of the East lagoon. The wastewater Treatment system will be modeled after components of the Advanced Integrated Wastewater Pond System (AIWPS).

The Tribal Chairman certified the need and urgency to fund this project. There is no remaining inventory of noncoal reclamation work remaining to be done on the Hopi Reservation, so the Hopi Tribe uses its AML fund solely for the purpose of Public Facilities Projects or Community Impact Projects. This

proposed project appears to satisfy the priorities established by the Hopi Tribe, consistent with Section 411(f) of SMCRA.

This project is designed to mitigate potential impacts to human health and safety as expressed in the December 30, 1999, Executive Order issued by the Hopi Tribal Chairman. The Order declares a state of emergency to prevent an imminent threat to human health and safety associated with the strong potential for breaching of sewer lagoon causing raw sewage to discharge into Oraibi Wash. In addition, on April 14, 1998, the Village of Kykotsmovi Board of Directors passed a formal resolution supporting a project to upgrade the existing wastewater system, public meetings were held and comments from the community were addressed.

The Indian Health Service, as the primary agency responsible for sanitation projects, has taken the lead role in facilitating this project and together with the Village of Kykotsmovi and the Hopi AML Program have sought out other funding sources. The expected benefit of the project will be the avoidance of potential groundwater contamination and incidence of infectious diseases. In addition, the project will provide for reuse of water for public recreation.

### **IV. How OSM Will Review the Hopi Tribe's Grant Application?**

OSM will review this grant application with respect to the regulations at 30 CFR 875.15; specifically §§ 875.15(e) (1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on the Hopi's coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total cost involved; (4) documentation from the local, Tribal, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the Hopi Tribe, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before the priority project relating to the protection of the public health and safety or the environment from the damage caused by past mining activities; and, (7) an analysis and review of the procedures the Hopi Tribe used to notify and involve the public in this request, and a copy of all comments

received and their resolution by the Hopi Tribe. The Hopi Tribe's application for the Kykotsmovi Sewer Lagoon Public Facilities Project contains the prescribed information for these seven items.

Section 875.15(f) requires OSM to evaluate all comments we receive and to determine whether the funding meets the requirements of §§ 875.15(e) (1) through (7) as described above. It also requires us to determine if the request is in the best interests of the Hopi Tribe's AML program. OSM will approve The Hopi Tribe's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

#### V. What To Do if You Want To Comment on the Proposed Project?

OSM is asking for public comments on the Hopi Tribe's request for funds to pay for \$200,000 (15%) of the total cost of the PFP. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to the Hopi Tribe's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Albuquerque Field Office (see **ADDRESSES**), we will not necessarily consider them in our final decision or include them in the administrative record.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking (or administrative) record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking (or administrative) 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 comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 19, 2000.

**Willis L. Gainer,**

*Director, Albuquerque Field Office.*

[FR Doc. 00-11558 Filed 5-8-00; 8:45 am]

**BILLING CODE 4310-05-P**

### OVERSEAS PRIVATE INVESTMENT CORPORATION

#### Submission for OMB Review; Comment Request

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for Comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its **Federal Register** Notice on this information collection request on February 29, 2000, in 65 FR 10822, at which time a 60-calendar day comment period was announced. This comment period ended April 29, 2000. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

#### FOR FURTHER INFORMATION CONTACT:

##### OPIC Agency Submitting Officer

Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336-8563.

##### OMB Reviewer

David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street,

NW., Washington, DC 20503, 202/395-3897.

#### Summary of Form Under Review

*Type of Request:* Revision of a currently approved collection.

*Title:* Self Monitoring Questionnaire for Insurance and Finance Projects.

*Form Number:* OPIC-162.

*Frequency of Use:* Annually.

*Type of Respondents:* Business or other individuals.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies assisted by OPIC.

*Reporting Hours:* 3 hours per form.

*Number of Responses:* 200 per year.

*Federal Cost:* \$6,000 per year.

*Authority for Information Collection:* Sections 231(k)2, of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: May 3, 2000.

**Ralph Kaiser,**

*Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 00-11501 Filed 5-8-00; 8:45 am]

**BILLING CODE 3210-01-M**

### OVERSEAS PRIVATE INVESTMENT CORPORATION

#### Submission for OMB Review; Comment Request

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on February 29, 2000, in 65 FR 10822, at which time a 60-calendar day comment period was announced. This comment period ended April 29, 2000. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the

information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336-8563.

*OMB Reviewer:* David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503, 202/395-3897.

**Summary of Form Under Review**

*Type of Request:* Reinstatement, without change, of a previously approved collection for which approval is expiring.

*Title:* OPIC Expedited Screening Questionnaire—Downstream Investments.

*Form Number:* OPIC-168.

*Frequency of Use:* Once per project submission.

*Type of Respondents:* OPIC on-lending facilities.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* OPIC on-lending facilities.

*Reporting Hours:* 1 hour per form.

*Number of Responses:* 30 per year.

*Federal Cost:* \$160 per year.

*Authority for Information Collection:* Section 231 (a-1) of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* This application will be sent to OPIC's on-lending facilities. The on-lending facilities will complete the information for companies in which the facility proposes to invest. The information collected will be reviewed to determine the expected effects of the projects on the U.S. economy and employment, as well as on the environment, economic development, and worker rights abroad.

Dated: May 3, 2000.

**Ralph Kaiser,**

*Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 00-11502 Filed 5-8-00; 8:45 am]

**BILLING CODE 3210-01-M**

**OVERSEAS PRIVATE INVESTMENT CORPORATION**

**Submission for OMB Review; Comment Request**

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on February 29, 2000, in 65 FR 10821, at which time a 60-calendar day comment period was announced. This comment period ended April 29, 2000. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

**OPIC Agency Submitting Officer**

Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336-8563.

**OMB Reviewer**

David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395-3897.

**Summary of Form Under Review**

*Type of Request:* Revision of a currently approved collection.

*Title:* Self-Monitoring Questionnaire for Investment Fund Projects.

*Form Number:* OPIC-217.  
*Frequency of Use:* Annually.  
*Type of Respondents:* Business or other individuals.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies assisted by OPIC.

*Reporting Hours:* 3 hours per form.

*Number of Responses:* 190 per year.

*Federal Cost:* \$5,700 per year.

*Authority for Information Collection:* Sections 231(k)2, of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and uses):* The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted fund projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: May 3, 2000.

**Ralph Kaiser,**

*Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 00-11503 Filed 5-8-00; 8:45 am]

**BILLING CODE 3210-01-M**

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**ACTION:** Notice of Information Collection under Review: Liberian Deferred Enforced Departure (DED) Supplement to Form I-765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 2000, at 65 FR 11083, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 8, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget,

Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Liberian Deferred Enforced Departure (DED) Supplement to Form I-765.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-765D, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or Households. The information contained in this form will be used by the INS to determine eligibility for the requested benefit. The data will enable adjudication officers to adjudicate the underlying benefit without the need of requiring individual interviews in local INS offices on the majority of applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the

proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 2, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00-11537 Filed 5-8-00; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Extension of Existing Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Application to Extend/Change Nonimmigrant Status.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2000 at 65 FR 11084, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service during that period. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 8, 2000. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202-395-7316, Department of Justice Desk

Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202-395-7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202-514-1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-539. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for extension of stay or change of nonimmigrant status. The INS will use the data on this form to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 256,210 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: 192,158 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 2, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00-11538 Filed 5-8-00; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection under Review: Application—Alternative Inspection Services.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **FEDERAL REGISTER** on February 22, 2000 at 65 FR 8739. The notice allowed for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 8, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget,

Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202-395-7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

- (1) *Type of Information Collection:* Extension of a currently approved collection.
- (2) *Title of the Form/Collection:* Application—Alternative Inspection Services.
- (3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-823. Inspections Division, Immigration and Naturalization Service.
- (4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected on this form will be used by the Immigration and Naturalization Service to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.
- (5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 70 minutes (1.166 hours) per response.
- (6) *An estimate of the total public burden (in hours) associated with the collection:* 583,000 annual burden hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 583,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 2, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00-11539 Filed 5-8-00; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

[INS No. 2053-00]

#### Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of a Detention Facility in the Houston, Texas Area

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

#### SUMMARY:

##### Proposed Action

The Immigration and Naturalization Service (INS) will prepare a Draft Environmental Impact Statement (DEIS) for evaluation of the environmental impacts of the construction of a Contractor-Owned Contractor-Operated (COCO) detention facility near Houston, Texas. The INS has a requirement to expand the total capacity in the area by 494 beds. The facility is needed in the Houston area (within a 35 mile radius from the George Bush International Airport) to house and care for illegal aliens detained by the INS for illegal entry into the United States. With regard to planned construction, the DEIS will

include evaluations of water, sewage system, parking, supporting administrative spaces, gates, gate access, lighting, and surveillance components. The direct project impacts, as well as cumulative impacts of the project, will also be addressed in the DEIS. According to the Council on Environmental Quality's regulation 40 CFR 1508.22, a scoping process is required prior to preparing a DEIS. As part of the DEIS process, the INS will hold a public meeting in the Houston, Texas area. Interested parties will be invited to help identify significant environmentally related items for evaluation in the DEIS. Notices will be published in the Houston local newspapers to provide the time, date, and location of the hearing.

#### Alternatives

The DEIS will include discussions of the alternative approaches to fulfilling the requirement for a detention facility in the area. This will include a review of potential construction sites within a 35-mile radius of the George Bush International Airport. The No Action alternative (i.e., cancellation of the proposed project) will also be reviewed.

#### Scoping Process

In developing the DEIS, interested parties and the public are invited to help decide the most significant issues to be examined. A scoping meeting will be held in the Houston area in the future. Notice of the meeting will be published in local newspapers prior to the meeting indicating the date, time, and location of the meeting.

#### DEIS Preparation

The identified significant and relevant scoping issues will be used to determine the environmental focus of the DEIS. Environmental experts will be used to prepare the analysis of the major environmental concerns in the DEIS. After completion, the DEIS will be made available for public review and comment prior to the preparation of the Final Environmental Impact Statement.

#### FOR FURTHER INFORMATION CONTACT:

Richard Diefenbeck, Director of Facilities and Engineering Division, 425 "I" Street, NW, Washington, DC 20536, Telephone 202-514-3099.

Dated: May 1, 2000.

#### Doris Miessner,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00-11555 Filed 5-8-00; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

[INS No. 2054-00]

#### Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of a Detention Facility in the Seattle, Washington Area

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

#### SUMMARY:

##### Proposed Action

The Immigration and Naturalization Service (INS) will prepare a Draft Environmental Impact Statement (DEIS) for evaluation of the environmental impacts of the construction of a Contractor-Owned Contractor-Operated (COCO) detention facility near Seattle, Washington. The INS has a requirement to expand the total capacity in the area by 500 beds. The facility is needed in the Seattle area to house and care for illegal aliens detained by the INS for illegal entry into the United States. With regard to planned construction, the DEIS will include evaluations of water, sewage system, parking, supporting administrative spaces, gates, gate access, lighting, and surveillance components. The direct project impacts, as well as cumulative impacts of the project, will also be addressed in the DEIS. According to the Council on Environmental Quality's regulation 40 CFR 1508.22, a scoping process is required prior to preparing a DEIS. As part of the DEIS process, the INS will hold a public meeting in the Seattle, Washington area. Interested parties will be invited to help identify significant environmentally related items for evaluation in the DEIS. Notice will be published in the Seattle local newspapers to provide the time, date, and location of the hearing.

#### Alternatives

The DEIS will include discussions of the alternative approaches to fulfilling the requirement for a detention facility in the area. This will include a review of potential construction sites. The No Action alternative (i.e., cancellation of the proposed project) will also be reviewed.

#### Scoping Process

In developing the DEIS, interested parties and the public are invited to help decide the most significant issues to be examined. A scoping meeting will

be held in the Seattle area in the future. Notice of the meeting will be published in local newspapers prior to the meeting indicating the date, time, and location of the meeting.

#### DEIS Preparation

The identified significant and relevant scoping issues will be used to determine the environmental focus of the DEIS. Environmental experts will be used to prepare the analysis of the major environmental concerns in the DEIS. After completion, the DEIS will be made available for public review and comment prior to the preparation of the Final Environmental Impact Statement.

#### FOR FURTHER INFORMATION CONTACT:

Richard Diefenbeck, Director of Facilities and Engineering Division, 425 "I" Street, NW, Washington, DC 20536, Telephone 202-514-3099.

Dated: May 1, 2000.

#### Doris Meissner,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00-11556 Filed 5-8-00; 8:45 am]

BILLING CODE 4410-10-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, May 16, 2000.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, D.C. 20594.

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

7257—Special Investigation Report: Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver.

7258—Special Investigation Report: Truck Parking Areas.

7154A—Brief of Accident/Safety Recommendation: Resulting from a spill of hydrogen peroxide in cargo compartment on Northwest Airlines Flight 957 from Orlando, Florida to Memphis, Tennessee on October 28, 1998.

**NEWS MEDIA CONTACT:** Telephone: (202) 314-6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314-6220 by Friday, May 12, 2000.

#### FOR FURTHER INFORMATION CONTACT:

Rhonda Underwood (202) 314-6065.

Dated: May 5, 2000.

#### Rhonda Underwood,

*Federal Register Liaison Officer.*

[FR Doc. 00-11707 Filed 5-5-00; 2:42 pm]

BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

### FirstEnergy Nuclear Operating Company, Perry Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to FirstEnergy Nuclear Operating Company (FENOC), for operation of the Perry Nuclear Power Plant, Unit 1 (Perry), located in Lake County, Ohio.

#### Environmental Assessment

##### *Identification of the Proposed Action*

The proposed action would allow FENOC to increase the maximum reactor core power level for facility operation from 3579 megawatts-thermal (MWt) to 3758 MWt, which is a five percent increase in rated core power.

The proposed action is in accordance with FENOC's application for amendment dated September 9, 1999, as supplemented by letters dated March 1 and March 13, 2000.

##### *Need for the Proposed Action*

The proposed action is needed to allow FENOC to increase the electrical output of the Perry facility and, thus, provide additional electrical power to service domestic and commercial areas of the licensee's grid.

##### *Environmental Impacts of the Proposed Action*

FENOC has submitted an environmental evaluation supporting the proposed power uprate and provided a summary of its conclusions concerning both the radiological and non-radiological environmental impacts of the proposed action. Based on the NRC's independent analyses and the evaluation performed by the licensee, the staff concludes that the proposed increase in power is not expected to result in a significant environmental impact.

##### *Radiological Environmental Assessment* Radwaste Systems

The reactor coolant contains activated corrosion products, which are the result of metallic materials entering the water and being activated in the reactor region. Under power uprate conditions, the feedwater flow increases with power and the activation rate in the reactor region increases with power. The net result may be an increase in the activated corrosion product production.

However, the total volume of processed waste is not expected to increase appreciably.

Non-condensable radioactive gas from the main condenser, along with air inleakage, normally contains activation gases (principally N-16, O-19 and N-13) and fission product radioactive noble gases. This is the major source of radioactive gas (greater than all other sources combined). These non-condensable gases, along with non-radioactive air, are continuously removed from the main condensers which discharge into the offgas system. The gaseous effluents will remain within the original limits following implementation of power uprate.

FENOC has concluded that the operation of the radwaste systems at Perry will not be impacted by operation at uprated power conditions and the slight increase in effluents discharged would continue to meet the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I. Therefore, power uprate will not appreciably affect the ability to process liquid or gaseous radioactive effluents and there are no significant environmental effects from radiological releases.

##### Dose Consideration

FENOC evaluated the effects of power uprate on the radiation sources within the plant and the radiation levels during normal and post-accident conditions. Post-operation radiation levels in most areas of the plant are expected to increase by no more than the percentage increase in power level. In a few areas near the reactor water piping and liquid radwaste equipment, the increase could be slightly higher. In this regard, procedural controls are expected to compensate for increased radiation levels. Occupational doses for normal operations will be maintained within acceptable limits by the site ALARA (as-low-as-reasonably-achievable) program.

Power uprate does not involve significant increases in the offsite doses to the public from noble gases, airborne particulates, iodine, tritium, or liquid effluents. A review of the normal radiological effluent doses shows that at the current power level, doses are less than 1 percent of the doses allowed by Technical Specifications. Present offsite radiation levels are a negligible portion of background radiation. Therefore, the normal offsite doses are not significantly affected by operation at the uprated power level and remain below the limits of 10 CFR part 20 and 10 CFR part 50, appendix I.

The change in core inventory resulting from power uprate is expected to increase post-accident radiation

levels by no more than the percentage increase in power level. The licensee reanalyzed the control rod drop accident, the loss-of-coolant accident, the fuel handling accident, the instrument line break accident, and the main steam line break accident for power uprate conditions. The slight increase in the post-accident radiation levels has no significant effect on the plant nor on the habitability of the control room envelope, the Emergency Operations Facility, or the Technical Support Center. Thus, the licensee has determined that access to areas requiring post-accident occupancy will not be significantly affected by power uprate. The licensee evaluated the whole body and thyroid doses at the exclusion area boundary that might result from the postulated design basis loss-of-coolant accident and determined that doses remain below established regulatory limits. Therefore, the results of the radiological analyses remain below the 10 CFR part 100 guidelines and all radiological safety margins are maintained.

##### Summary

The proposed power uprate will not significantly increase the probability or consequences of accidents, will not involve any new radiological release pathways, will not result in a significant increase in occupational or public radiation exposure, and will not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

##### *Non-Radiological Environmental Assessment*

The licensee reviewed the non-radiological environmental impacts of power uprate based on information submitted in the Environmental Report, Operating License Stage (ER/OL), the NRC Final Environmental Statement (FES), and the requirements of the Environmental Protection Plan (EPP). Based on this review, the licensee concluded that the proposed uprate has no significant effect on the non-radiological elements of concern and the plant will be operated in an environmentally acceptable manner as established by the FES. In addition, the licensee states that existing Federal, State, and local regulatory permits presently in effect accommodate power uprate without modification.

The service water system at Perry was originally designed to support the operation of two units. Therefore, the design discharge temperature into Lake

Erie is based on two unit operation. As a result of power uprate to 105 percent of current licensed core power, there will be a slight increase in the normal heat loads rejected to the plant service water system. For normal operation, the maximum service water heat loads occur during peak summer months. The licensee calculates that the maximum summer discharge temperature for the service water system will be increased by 0.34°F, or from 90.1°F to 90.44°F. This increase in service water temperature will not exceed the original design discharge temperature.

The effect on cooling tower evaporation, makeup, and blowdown was evaluated and found to be acceptable. An increase in steam and condensate flow will result in a corresponding increase in the net heat rejection to the cooling tower. The cooling tower evaporation is calculated to increase from 14,554 gallons per minute (gpm) to 15,587 gpm, whereas the cooling tower drift and blowdown temperature are predicted to remain unchanged. In NUREG-0884 (Final Environmental Statement Related to the Operation of Perry Nuclear Power Plant, Units 1 and 2), the staff concluded that cooling tower induced icing and fogging with two cooling towers in operation would not adversely affect driving conditions, airports, shipping ports, or waterways in the vicinity of the plant. Considering that only one unit was completed at the Perry site, any increase in icing and fogging from the additional cooling tower evaporation would be bounded by the original two-unit analyses. There are no state regulated limits for cooling tower parameters.

FENOC determined that the effects of power uprate on air and land resources are negligible. The aesthetics of the physical plant and plant site, as well as actual land use, are not changed or increased by power uprate. An increase in operational consumption of natural resources is negligible and below the levels previously evaluated for two unit operation. Finally, air quality and noise levels remain the same as before the power uprate.

With regard to potential non-radiological impacts, the proposed action does not change the method of operation at Perry or the methods of handling effluents. No changes to land use would result and the proposed action does not involve any historic sites. Therefore, no new or different types of non-radiological environmental impacts are expected. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

#### *Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the “no-action” alternative). Denial of the application would result in no change in current environmental impacts but would reduce the operational flexibility that would be afforded by the proposed change. The environmental impacts of the proposed action and the alternative action are not significantly different.

#### *Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Perry.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on May 1, 2000, the staff consulted with the Ohio State official, Ms. Carol O’Claire, of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee’s letter dated September 9, 1999, as supplemented on March 1 and March 13, 2000, which are available for public inspection at the Commission’s Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland this 3rd day of May 2000.

For the Nuclear Regulatory Commission.

**Anthony J. Mendiola,**

*Chief, Section 2, Project Directorate III,  
Division of Licensing Project Management,  
Office of Nuclear Reactor Regulation.*

[FR Doc. 00-11536 Filed 5-8-00; 8:45 am]

**BILLING CODE 7590-01-P**

## **OFFICE OF MANAGEMENT AND BUDGET**

### **Agency Information Collection Under Review by the Office of Management and Budget**

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of submission for OMB review; comment request.

**SUMMARY:** The Office of Management and Budget (OMB) has submitted the information collection listed as Appendix C at the end of this notice to the Office of Information and Regulatory Affairs (OIRA), OMB, for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13). This new form will be required by OMB Circular A-21, “Cost Principles for Educational Institutions,” for the submission of facilities and administrative rate proposals by educational institutions. On September 10, 1997, (62 FR 47721) OMB proposed the use of a standard format for submitting of facilities and administrative rate proposals by educational institutions. OMB received 35 comments from Federal agencies, universities and professional organizations, all of whom favored the development of such a form. Based upon this information, OMB issued a **Federal Register** notice on August 12, 1999, (64 FR 44062) which proposed to revise Circular A-21 to incorporate a new form. OMB received 40 comments from Federal agencies, universities and professional organizations. Most commenters agreed with the concept of a standard format that would streamline the rate proposal submission process. In addition, many commenters had questions and requested clarifications regarding data to be included in the form or the format of the form. Changes were made to the form as appropriate. The comments and OMB responses are summarized in the Comments and Responses section.

Once this new form receives clearance under the Paperwork Reduction Act, OMB will issue a final revision to incorporate the form in Circular A-21.

**DATES:** Submit comments on or before June 8, 2000.

**ADDRESSES:** Address comments to Ed Springer, Desk Officer, Office of Information and Regulatory Affairs (OIRA), OMB, 725 17th Street NW, Room 10236, New Executive Office Building, Washington, DC 20503. E-mail comments may be submitted to [edward.springer@omb.eop.gov](mailto:edward.springer@omb.eop.gov). Please include the full body of the comments in the text of the message and not as an

attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message. (Comments should also be addressed to the Office of Federal Financial Management at the address listed below.)

**FOR FURTHER INFORMATION CONTACT:** Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395-3993 (e-mail Hai\_M.\_Tran@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 0348-XXXX.

*Title:* Standard Form for Facilities and Administrative Rate Proposal.

*Form No:* N/A.

*Frequency:* On occasion.

*Type of Review:* New collection.

*Respondents:* Large universities.

*Number of Responses:* 282.

*Estimated Time Per Response:* 4 hours.

*Needs and Uses:* This provides a standardized format for the submission of facilities and administrative (F&A) rate proposals that would assist educational institutions in completing their F&A rate proposals more efficiently, and help the cognizant agency review each proposal on a more consistent basis. It will also facilitate the Federal government's effort to collect better information regarding educational institutions' F&A costs that could be useful in explaining variations in F&A rates among institutions. Copies of the above information collection proposal can be obtained by calling or writing Gilbert Tran at the address listed above.

**Comments and Responses**

*General*

*Comment:* Some commenters suggested that the estimated time of four hours needed to complete the standard format is gravely underestimated. They commented that the process of collecting data for the preparation of an institution's rate proposal and completing the standard format can take several months.

*Response:* OMB agrees that the process of collecting data and preparing the facilities and administrative rate proposal in accordance with Circular A-21 can take several months to complete depending on the size of the universities and the complexity of its proposals. The estimated four hours is only for the filling of prepared data in the standard format. Only three commenters indicated that the completion of the standard format will greatly increase grantees' workload. In addition, in consideration of the comments that cited some data requests as overly cumbersome and difficult to collect,

OMB has reexamined all proposed data requests, discussed them with the Federal agencies and, consequently, deleted much of the requested data in the final version.

To further streamline and simplify the proposal submission process, OMB will work with the Federal agencies to encourage the submission of the standard format electronically.

*Comment:* Most commenters applauded the concept of a standard format that would streamline the rate proposal submission process. However, they requested that the implementation date be delayed to allow them to adjust to the new format requirements.

*Response:* OMB agrees. The implementation date is changed to apply to facilities and administrative proposals submitted on or after July 1, 2001 (instead of July 1, 2000). Earlier implementation of the revision is permitted and encouraged.

*Comment:* The revision should explicitly state that universities and cognizant agencies could agree to eliminate certain elements from the standard format, when applicable, particularly when a university uses the standard 24 percent to claim administrative costs, as allowed in section G.9 of Circular A-21, "Alternative method for administrative costs."

*Response:* OMB agreed. The final revision allows the cognizant agencies to grant exceptions, on an institution-by-institution basis, from all or portions of Part II of the standard format. For example, when a university uses the standard 24 percent to claim administrative costs as allowed in section G.9 of Circular A-21, the cognizant agency may waive all the requirements for detailed data in the administrative cost pools (*i.e.*, general administration, departmental administration and sponsored project administration). However, for consistency in data collection and reporting, information in Part I should not be waived (unless the information is not applicable to a particular institution).

*Comment:* Several commenters raised a concern about having to submit two standard format proposals in one fiscal year when they negotiate rates on a "fixed with carry-forward" basis. They do not see the need to submit a standard format proposal when the proposal is used only to determine the carry-forward amount.

*Response:* When an institution is required to submit a historical/incurred cost proposal solely to determine a carry-forward amount, the cognizant agency may waive all or part of the

requirements to submit the standard format proposal as required in G.12 of Circular A-21.

*Part I, Schedule A*

*Comment:* Some commenters requested clarification of the information related to students, faculty and staff population in Part I, Schedule A, item d of the standard format. Does the population count include all affiliate organizations associated with the institution?

*Response:* The students, faculty and staff population information requested in Part I, Schedule A of the standard format should be based on full-time equivalents (FTE) for the institution only.

*Comment:* Several commenters suggested that the breakout of salaries and wages (and fringe benefits) by professional/professorial and other labor (as required in Part I, Schedule A, item h; and, Part II, "Rate Proposal Summary by Major Function," of the standard format) is not always maintained at the aggregate level by universities and may require significant effort to compute.

*Response:* OMB agreed that the requested data may not be readily available on the aggregate level at many universities. Therefore, this requested data is removed from the standard format in Part I (Schedule A, item h) and Part II, "Rate Proposal Summary by Major Function," item 3.(d) of the standard format. In addition, this information is usually available on a department-by-department basis with the departmental administration calculation schedules.

*Comment:* The breakout by salaries classification (*i.e.*, professorial/professional and other labor) by major functions, as required in item h of Part I of the standard format, is difficult to accumulate and would require significant time and effort.

*Response:* This breakout requirement is removed. Item h now only requires the modified total direct costs for each major function by salaries and wages/fringes, and non-labor costs.

*Comment:* In item i of Part I, Schedule A of the standard format, the schedule seems to require information only on the allocation percentage of overhead pools to direct functions. Should cross-allocation percentage to other overhead pools be included? If cross allocations are excluded, the "total" column should be eliminated because the total percentage will not be 100 percent. Alternatively, another column (titled "Other") should be added to account for all cross allocations.

*Response:* For simplicity, cross allocation of an overhead pool to

another overhead pool (e.g., allocation of interest expenses to buildings or equipment) is excluded from this schedule. The schedule will show only the allocation of F&A cost pools to major direct functions for which amounts should be readily available from the step-down allocation schedule. This "total" column is, therefore, eliminated. The "Other" column is used to display overhead allocation to other major institutional functions for which F&A rates are computed (e.g., primate centers and applied physics laboratories).

*Comment:* In item i of Part I, Schedule A of the standard format, what should be included in the "other" column?

*Response:* The "other" column in item i of Part I of the standard format should reflect the percentage of the cost pool allocated to major functions (other than Instruction, Organized Research and OSA) for which rates are developed for billing purposes such as primate centers or applied physics laboratories.

#### Part I, Schedule B

*Comment:* What is the definition of the term "base year" used in Part I, Schedule B of the standard format? Does it refer to: (a) only historical (or incurred) cost financial information or (b) both historical and projected cost information related to an F&A rate proposal submission?

*Response:* The term "base year" refers to only historical (or incurred) cost data which is based on an institution's financial statements. To clarify this matter, the "base (or data) year" phrase at the beginning of Part I, Schedule B of the standard format has been changed to "Historical Base Year."

*Comment:* What should be included in "Land Improvements" line in Part I, Schedule B of the standard format?

*Response:* Under this title, the universities should report the distribution of "land improvements" costs to the universities' major functions and the computed percentage point for the overall F&A rates. "Land improvements" costs are defined in Circular A-21, section F.2.(b).4, as "depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings."

*Comment:* Schedule B of Part I of the standard format should include a line for the utility cost adjustment of 1.3 percentage points, as allowed in section F.4.c of Circular A-21 for certain universities.

*Response:* OMB agreed. A line is added in schedule B of Part I of the standard format, under the "Operation &

Maintenance" item to allow the applicable universities to report the utility cost adjustment in order to reflect all the rate components proposed in the F&A proposal.

*Comment:* What should be included in the "Other" line under the "Modified Total Direct Cost and F&A Rates" of Part I, Schedule B of the standard format?

*Response:* The "Other" line under the "Modified Total Direct Cost and F&A Rates" section of the standard format is used when a special rate (other than On-Campus or Off-Campus) is developed for any major functions included in the F&A proposal. Examples of special rates are research vessel rates and overseas training rates.

*Comment:* Some commenters suggested combining the categories of "Research Training Awards," "Other Awards," and "Non-Federal Sources" under the "Composition of Rate Base" in Part I of Schedule B of the standard format into one category called "Other Awards (not based on negotiated rates)." They suggested that the requested breakout is not necessary for the F&A proposal review.

*Response:* OMB disagreed. The breakout for the composition of rate base is necessary in two ways. First, the Federal Government wants to track the percentage of awards that are not fully reimbursed at the negotiated rates by source of funding and by types of awards. Secondly, the breakout is important to verify the reasonableness of space cost allocation to benefitting activities.

*Comment:* Where is the cost sharing amount reported under the "Composition of Rate Base" in Part I, Schedule B of the standard format?

*Response:* The amount of cost sharing, representing the costs on research projects that are borne by the universities, is reported under the "Organized Research" column on the "Non-Federal Sources" line item.

*Comment:* Under the "Miscellaneous Statistics" section of Part I, Schedule B of the standard format, data related to facilities' finance costs ("percent of ASF Financed") should not be required if the university does not claim interest expenses on the F&A cost proposal (as some public universities do not). In addition, this information should only be requested for buildings that are more than 50 percent dedicated to research activities.

*Response:* OMB agreed that this information is not necessary when the university does not claim any interest costs for its facilities on its F&A cost proposal. The note (1) is changed to allow such exemption. However, for comparative analysis, data must be

collected for all buildings regardless of their portion dedicated to research activities. This information is helpful in explaining the cost of research facilities and any increase of F&A rates over a period of time.

#### Part II—Standard Documentation Requirements

*Comment:* Item 1 in the General Information section of Part II of the standard format contains the phrase "financial statements including any affiliated organizations." What is the meaning of affiliated organizations and why is this data needed?

*Response:* Many large institutions provide administrative services to various units within their corporate structure. A school, for example, may furnish certain administrative services to an "affiliated" hospital. The school's financial statements would probably exclude these costs and the hospital's financial statements would include these costs. In this case, a review of consolidated financial statements, which include the affiliated unit, will be needed to support (i) the total cost of the shared services and (ii) the assignment of costs on the financial statements of the school and the hospital. The affiliated organizations exclude non-monetary relationships (e.g., teaching rotation for medical students).

*Comment:* Under item 2 of the General Information section of the standard format, what does OMB mean by "relevant detail supporting the financial statement?" Does "detail" include all journal entries?

*Response:* In preparing an F&A proposal, a university is expected to start with its audited financial statements, prepared under generally accepted accounting principles (GAAP), and reclassify the accumulated costs into direct functions and cost pools as defined in Circular A-21. A reconciliation that includes all major reclassifications and adjustments must exist between these two documents to explain the differences. For example, all administrative costs are reported under "Institutional Support" on the university's financial statements. These costs could be reclassified to the general administrative, departmental administrative and sponsored project administrative cost pools for A-21 purposes. This provision requires that the university report the reclassified amounts along with a note to explain the nature of the reclassification. Detailed journal entries are not necessary for this request. In the final revision, the word "detail" is replaced with the word "data."

*Comment:* Several commenters indicated that the organized research base breakdown by college or school into four categories: (a) Federal awards receiving F&A cost based on the negotiated rate agreement, (b) Federal awards receiving less than the negotiated rates, (c) non-Federal awards, and (d) cost sharing (as requested in Part II, "General Information," item 5) is not readily available and would require extensive effort to produce. Some suggested that the information, in a summary level, is already available in Part I, Schedule B, under the "Composition of Rate Base" section of the standard format.

*Response:* In light of the possible excessive effort to produce the level of detail required for this request, OMB deleted this data requirement. OMB also agreed that similar data, in a summary level, is available in Part I, schedule B, "Composition of Rate Base" of the standard format.

*Comment:* Some commenters suggested that the requirement for a statement concerning the physical inventory requirement (Part II, "General Information," item 9.d of the standard format) be deleted because this requirement duplicates those required under section J.12.e, "Depreciation and use allowances," of the Circular.

*Response:* OMB agreed. The proposed statement of assurance regarding the physical inventory for equipment is removed in the final revision. Section J.12.e of Circular A-21 requires that "charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable." By completing the "Certificate of F&A Costs," as required in Section K.2.b of Circular A-21, the university certifies that it complies with the requirement of Section J.12.e of Circular A-21 for a biannual equipment physical inventory.

*Comment:* Some commenters suggested that the assurance statements regarding the compensation limits (Part II, "General Information," item 9.e of the standard format) be deleted because such assurance is already included in the Certification of F&A costs (Part II, "General Information," item 9.a of the standard format). If required, can the university include such an assurance statement with other assurance statements required under this section?

*Response:* The Certification of F&A costs, as required by Section K. of the Circular, does not currently provide any

assurance regarding the compensation limits, established under separate program statutes. Such assurances are necessary to ascertain that costs charged against Federal programs do not exceed limits established by program statutes. The assurance statement regarding compensation limits can be (1) added to the Certification of F&A costs, (2) issued as a separate statement, or (3) combined with other assurance statements required by the Circular (e.g., lobbying certification).

*Comment:* Some commenters suggested that the reference to "voluntary cost sharing" in Part II, "Rate Proposal Summary By Major Function," item 3.(a) of the standard format be deleted until the current debate on the reporting requirements for voluntary cost sharing is finalized.

*Response:* OMB agreed. The reference to "voluntary" cost sharing is deleted. The breakout between mandatory and voluntary cost sharing is therefore not required. Only the total cost sharing amount, as it is computed and reported on the institution's F&A rate proposal, is required for Schedule B of Part I, "Miscellaneous Statistics," and item 3.(a) of Part II, "Rate Proposal Summary" of the standard format.

*Comment:* Regarding the space survey required in Part II of the standard format, does it cover all buildings at the university or just the research buildings?

*Response:* The space survey should include all buildings at the university. An university's total square footage information by major functions is necessary to allocate the space related costs such as operation and maintenance, building and equipment depreciation (or use allowances), and interest costs.

*Comment:* In Part II of the standard format, under the "Operation and Maintenance," "General Administrative," "Departmental Administration," and "Sponsored Projects Administration" sections, OMB should delete the requirement for a breakout of total costs by labor and non-labor costs. Some commenters questioned the usefulness of this requirement for the cognizant agency's review, particularly when the administrative rates are capped at 26 percent.

*Response:* The requirement for breakout of total costs by labor and non-labor costs for the "General Administrative" and "Sponsored Projects Administration" is deleted; only total cost amounts are required for

these two cost pools. However, this breakout is necessary for the review of the "Operation and Maintenance" (e.g., analysis of various utility costs and maintenance project costs) and the "Departmental Administration" cost pools (e.g., analysis of the direct charge equivalent computation).

Issued in Washington, DC, April 28, 2000.

**Joshua Gotbaum,**

*Executive Associate Director and Controller.*

OMB proposes to add the following section and Appendix to Circular A-21.

1. Add Section G.12 to read as follows:

12. *Standard Format for Submission.* For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions which use the simplified method for calculating F&A rates, as described in Section H.

2. Add Appendix C (shown below):

### Appendix C

*OMB Circular A-21 Documentation Requirements for Facilities and Administrative (F&A) Rate Proposals Claiming Costs Under the Regular Method*

The documentation requirements for F&A rate proposals consist of two parts. Part I provides a schedule of summary data on the institution's F&A cost pools and their allocations, and the proposed F&A rates. For illustration, an example of a completed Part I is included. Part II describes the standard documentation to be submitted with the institution's F&A rate proposal.

#### Part I: Summary Data Elements for F&A Rate Proposal—Schedule A

Name of Institution:

Organization Number: (*Federal Use Only*)

Address:

a. Cognizant Federal Agency Rate

Setting: Audit:

b. Type of Institution Private ( ) Public/ State ( )

c. Fiscal Year

d. Institution Population (FTE)

Students:

Faculty:

Staff:

e. Status of Disclosure Statement

Required to Submit (Y/N)?

Due Dates: Initial: Revised:

Date Submitted

Approved ( ) Yes ( ) No Date:

f. Most Current F&A Rates (*i.e.*, final, predetermined, fixed) (Last three fiscal years)

Type of rate	Fiscal year covered	Date of rate agreement	On-campus instruction	On-campus organized Research	On-campus OSA*	Off-campus instruction	Off-campus organized research	Off-campus OSA*

(\*OSA= Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

	Instruction	Organized research	OSA
Building Depreciation or Use Allowance .....	.....	.....	.....
Interest Expense .....	.....	.....	.....
Operation and Maintenance .....	.....	.....	.....

h. Dollar amounts by major functions proposed—Base Year (in thousands)

	Instruction	Organized research	OSA
Salaries & Wages/Fringes .....	.....	.....	.....
Non-labor Costs .....	.....	.....	.....
Modified Total Direct Costs .....	.....	.....	.....

i. Percentage of cost pool dollars allocated to major functions proposed—Base Year

	Instruction	Organized research	OSA	Other*
Building Depreciation or Use Allowance .....	.....	.....	.....	.....
Equipment Depreciation or Use Allowance .....	.....	.....	.....	.....
Interest Expense .....	.....	.....	.....	.....
Operation and Maintenance .....	.....	.....	.....	.....
Library .....	.....	.....	.....	.....

\* "Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs: Standard Method: Special Study:

k. Procedure for claiming fringe benefit costs: Specific Identification:

Negotiated Rate:

Other (see attached)

**Part I: Summary Data Elements for F&A Rate Proposal—Schedule B**

—Name of Institution:

—Historical Base Year:

**BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)**

	Instruction	Organized research	OSA
<b>FACILITIES GROUP</b>			
Depreciation/Use Allowance			
• Buildings .....	\$	\$	\$ %
• Equipment .....	\$ %	\$	\$ %
• Land Improvements .....	\$ %	\$ %	\$ %
Interest Expense .....	\$ %	\$ %	\$ %
Operation & Maintenance .....	\$ %	\$ %	\$ %
Utility Cost Adjustment .....	\$ %	\$ %	\$ %
Library .....	\$ %	\$ %	\$ %

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)—Continued

	Instruction	Organized research	OSA
<b>ADMINISTRATIVE GROUP</b>			
General .....	\$ %	\$ %	\$ %
Departmental .....	\$ %	\$ %	\$ %
Sponsored Projects .....	\$ %	\$ %	\$ %
Student Services .....	\$ %	\$ %	\$ %
Adjustment for 26% Limitation .....	%	%	%

<b>MODIFIED TOTAL DIRECT COST AND F&amp;A RATES</b>			
On-Campus .....	\$ %	\$ %	\$ %
Off-Campus .....	\$ %	\$ %	\$ %
Other .....	\$ %	\$ %	\$ %
Total MTDC .....	\$	\$	\$

<b>COMPOSITION OF RATE BASE</b>			
Federal Awards			
On-Campus (negotiated rates) .....	\$	\$	\$
Off-Campus (negotiated rates) .....	\$	\$	\$
Research Training Awards .....	\$	\$	\$
Other Awards (not based on negotiated rates) .....	\$	\$	\$
Non-Federal Sources .....	\$	\$	\$
Total .....	\$	\$	\$

<b>MISCELLANEOUS STATISTICS</b>			
Cost Sharing in Rate Base .....	\$	\$	\$
Reassignable Square Feet (ASF) by Major Function .....	\$	\$	\$
Percent of ASF Financed (1) .....			

**Note (1):** Ratio of ASF subject to financing divided by total ASF. If 20% of a building's acquisition cost is financed, then 20% of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A proposal.

**Part I—Example: Summary Data Elements for F&A Rate Proposal—Schedule A**

Name of Institution: University of XYZ

Organization Number: (*Federal, Use Only*)  
 Address: 100 Main St., Somewhere, ST 12345  
 a. Cognizant Federal Agency Rate Setting: HHS Audit: HHS  
 b. Type of Institution Private ( ) Public/State (X)  
 c. Fiscal Year July 1, 1997–June 30, 1998.  
 d. Institution Population (FTE) Students: 12,000

Faculty: 1,759  
 Staff: 2,798  
 e. Status of Disclosure Statement Required to Submit (Y/N)? Yes  
 Due Dates: Initial: 06/30/98  
 Revised: 12/31/98  
 Date Submitted: 12/10/98  
 Approved (X) Yes ( ) No  
 Date: 06/13/ 99  
 f. Most Current F&A Rates (*i.e.*, final, predetermined, fixed) (Last three fiscal years)

Type of rate	Fiscal year covered	Date of rate agreement	On-campus instruction	On-campus organized research	On-Campus OSA*	Off-campus instruction	Off-Campus organized research	Off-campus OSA*
Pred	1999	09/15/96	78.0%	52.5%	38.3%	26.0%	26.0%	20.0%
Pred	1998	09/15/96	78.0%	52.5%	35.0%	26.0%	26.0%	20.0%
Pred	1977	09/15/96	76.0%	53.0%	35.0%	26.0%	26.0%	20.0%

(\*OSA=Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (*i.e.*, base year and four preceding years) by major functions proposed (in thousands).

	Instruction	Organized research	OSA
Building Depreciation or Use Allowance .....	729	2,639	0
Interest Expense .....	0	1,794	0
Operation and Maintenance .....	1,280	4,632	0

h. Dollar amounts by major functions proposed—Base Year (in thousands)

	Instruction	Organized research	OSA
Salaries & Wages/Fringes .....	36,400	63,750	11,050
Non-labor Costs .....	19,600	21,250	1,950
Modified Total Direct Costs .....	56,000	85,000	13,000

i. Percentage of cost pool dollars allocated to major functions proposed—Base Year

	Instruction	Organized research	OSA	Other*
Building Depreciation or Use Allowance .....	40.0%	44.0%	2.5%	7.0%
Equipment Depreciation or Use Allowance .....	34.2%	27.7%	2.1%	10.0%
Interest Expense .....	29.9%	32.4%	1.9%	0.0%
Operation and Maintenance .....	32.8%	35.6%	2.1%	15.0%
Library .....	75.3%	10.9%	0.9%	0.0%

\* "Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs:

Standard Method: Yes  
Special Study: No

k. Procedure for claiming fringe benefit costs:

Specific Identification: No  
Negotiated Rate: Yes  
Other (see attached)——

**Part I—Example: Summary Data Elements for F&A Rate Proposal—Schedule B**

Name of Institution: University of XYZ  
Historical Base Year: 07/01/97 to 06/30/98

**BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)**

	Instruction		Organized Research		OSA	
	(\$)	(%)	(\$)	(%)	(\$)	(%)
<b>FACILITIES GROUP</b>						
Depreciation/Use Allowance						
—Buildings .....	4,861	9.6	5,278	6.9	306	2.6
—Equipment .....	3,082	6.1	2,496	3.3	194	1.7
—Land Improvements .....	1,992	4.0	133	0.2	17	0.1
Interest Expense .....	1,944	3.9	2,111	2.8	122	1.0
Operation & Maintenance .....	8,532	16.9	9,264	12.1	536	4.6
Utility Cost Adjustment .....	0	0.0	994	1.3	0	0.0
Library .....	7,910	15.7	1,146	1.5	96	0.8
<b>ADMINISTRATIVE GROUP</b>						
General .....	1,535	2.7	2,330	2.7	356	2.7
Departmental .....	11,991	21.4	17,239	20.3	2,797	21.5
Sponsored Projects .....	89	0.2	2,693	3.2	412	3.2
Student Services .....	4,166	7.4	0	0.0	0	0.0
Adjustment for 26 Limitation .....		-5.7		-0.2		-1.4
<b>MODIFIED TOTAL DIRECT COST AND F&amp;A RATES</b>						
On-Campus .....	50,400	82.2	76,500	54.2	11,700	36.8
Off-Campus .....	5,600	26.0	8,500	26.0	1,300	26.0
Other .....	0	0.0	0	0.0	0	0.0
Total MTDC .....	56,000		85,000		13,000	
<b>COMPOSITION OF RATE BASE</b>						
Federal Awards						
On-Campus (negotiated rates) .....	1,000		46,000		900	
Off-Campus (negotiated rates) .....	120		5,000		400	
Research Training Awards .....	0		0		0	
Other Awards (not based on negotiated rates) .....	1,680		8,500		2,600	
Non-Federal Sources .....	53,200		25,500		9,100	
Total .....	56,000		85,000		13,000	

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)—Continued

	Instruction		Organized Research		OSA	
	(\$)	(%)	(\$)	(%)	(\$)	(%)
<b>MISCELLANEOUS STATISTICS</b>						
Cost Sharing in Rate Base .....	(10,000)	.....	10,000	.....	0	.....
Assignable Square Feet (ASF) by Major Function .....	83,611 ASF	.....	90,778 ASF	.....	5,256 ASF	.....
Percent of ASF Financed (1) .....	7.0	.....	20.0	.....	30.0	.....

**Note (1):** Ratio of ASF subject to financing divided by total ASF. If 20 of a building's acquisition cost is financed, then 20 of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A rate proposal.

**Part II**

*Introduction*

This Part contains the standard documentation requirements that are needed by your cognizant agency to perform a review of your institution's F&A rate proposal. This documentation supports the development of proposed rates shown in Part I and will be submitted with your F&A rate proposal.

This listing contains minimum documentation requirements.

Additional documentation may be needed by your cognizant agency before completing a proposal review.

If there are any questions about these requirements, please contact your cognizant agency.

Documentation requirements would be cross-referenced to appropriate schedule(s) within the submitted F&A rate proposal.

*General Information*

Reference:

1. Copy of audited financial statements including any affiliated organizations. The statements must be reconciled to the F&A base year cost calculation. Copy of most recently issued Circular A-133 audit reports

2. Copy of relevant data supporting the financial statement, including a reconciliation schedule for each cost pool and rate base in the F&A base year cost calculation. A reconciliation schedule will show each reclassification and adjustment to the financial statements to arrive at the cost pools and rate bases in F&A base year cost calculation. Each reclassification and adjustment must be explained in notes to the reconciliation schedule

3. Cost step-down schedule showing allocation of each F&A cost pool to the Major Functions and other cost pools

4. Explanation for each proposed organized research rate component which exceeds the prior negotiated rate component by 10%

5. Schedules clearly detailing composition and allocation base(s) of each F&A cost pool in base year cost calculation. If the institution has filed a Disclosure Statement (DS-2) submission, specific references (rather than narrative descriptions) from the DS-2 may be used

6. Narrative description of composition of each F&A cost pool and allocation methodology. If the institution has filed a DS-2 submission, specific references (rather than narrative descriptions) from the DS-2 may be used

7. Narrative description of changes in accounting or cost allocation methods made since the institution's last F&A submission. If the institution has filed a DS-2 submission, specific references (rather than narrative descriptions) from the DS-2 may be used

8. Copy of reports on the conduct and results of special studies performed under Section E.2.d, when applicable

9. Copy of the following:

(a) The Certificate of F&A Costs

(b) Lobbying Certification

(c) Description of procedures used to ensure that awards issued by the Federal Government do not subsidize the F&A costs allocable to awards made by non-Federal sources (e.g., industry, foreign governments)

(d) Assurance Certification—for those institutions listed on Exhibit A—concerning disposition of Federal reimbursements associated with claims for depreciation/use allowances

(e) Assurance statement that institution is in compliance with Federal awarding agency limitations on compensation (e.g., NIH salary limitation, executive compensation)

10. If applicable, reconciliation of carry-forward amounts from prior years used in the current proposal

11. Transmittal letter stipulating the type(s) of rates proposed, the fiscal year(s) covered by the proposal and the base year used

*Rate Proposal Summary by Major Function*

1. Summary of F&A base year rates calculated by Major Function and special rates (e.g., vessel rates) if applicable by component. These would be grouped by Administrative Components and Facilities Components. Total base year calculated rates would be disclosed, as well as allowable rates after the 26 percent limitation on Administrative Components

2. A breakout of Modified Total Direct Cost (MTDC) rate base figures for each major function (and special rates, if applicable) by:

(a) On-Campus and Off-Campus amounts

(b) Federal awards

—Based on Negotiated Rates—On-Campus

—Based on Negotiated Rates—Off-Campus

—Research Training Awards

—Other Awards (not based on negotiated rates)

(c) Non-Federal Sources

3. Miscellaneous Statistics including:

(a) Cost Sharing in the Rate Base

(b) Assignable Square Feet (ASF) by Major Function

(c) Percentage of ASF which is financed (by Major Function)

(d) A breakout of MTDC by Direct Salaries and Wages/ fringe benefits and non labor costs by major functions

4. Future rate adjustments, if necessary, related to material changes since the base year. A clear description of the justification for each of the following:

(a) Changes by cost pool by year

(b) Changes in MTDC base by year

(c) Changes in F&A rates for future years

5. Summary of future F&A rates, if necessary, by Major Function and special rates (e.g., vessel rates) which lists each administrative and facilities component by year.

*Building Use Allowance and/or Depreciation*

\_\_\_ 1. Reconciliation of building cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements.

**Note:** If an institution's financial statements do not disclose depreciation expense (e.g., those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

\_\_\_ 2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

\_\_\_ 3. If a method different from the standard allocation method, described in section F.2.b, was used, describe method. Provide justification for its use and a schedule of allocation. If the institution has filed a DS-2 submission, claimed allocation methodology may be referenced to specific section of the DS-2

\_\_\_ 4. If depreciation is claimed, describe what useful lives by group and component have been used

*Equipment Use Allowances and/or Depreciation*

\_\_\_ 1. Reconciliation of equipment cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements.

**Note:** If an institution's financial statements do not disclose depreciation expense (e.g., those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

\_\_\_ 2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

\_\_\_ 3. If a method different from the standard allocation method, described in section F.2.b, was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution has filed a DS-2 submission, claimed allocation methodology may be referenced to specific section of the DS-2

\_\_\_ 4. If depreciation is claimed, describe what useful lives by asset class and component have been used

*Interest*

\_\_\_ 1. Reconciliation of interest cost used in the F&A base year calculation to the financial statements

\_\_\_ 2. A schedule showing amount of interest cost assigned to each building and a distribution to all benefitting functions within each building for each proposed "Major Function"

*Space Survey*

\_\_\_ 1. A summary schedule of square footage by school, department, building and function

\_\_\_ 2. The same schedule should then be sorted by school, building, department, and function

\_\_\_ 3. Copies of space inventory instructions, forms, and definitions

*Operation and Maintenance (O&M)*

\_\_\_ 1. A summary schedule of each major activity (or subpool) in O&M cost pool. It must show the costs by S&W/fringe benefits and all non-labor cost categories

\_\_\_ 2. A schedule showing amount of O&M costs distributed to all functions

*General Administration (G&A)*

\_\_\_ 1. A summary schedule of each activity (or subpool) in the G&A cost pool

\_\_\_ 2. A schedule of costs in the modified total costs (MTC) allocation base

\_\_\_ 3. If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS-2 submission, claimed allocation methodology may be referenced to specific section of the DS-2

*Departmental Administration (DA)*

\_\_\_ 1. Schedules of the DA summary by school, department and allocated to Major Functions by department

\_\_\_ 2. Schedule identifying costs by S&W/fringe benefits and non-labor costs by department for the following functions:

- (a) Direct (Major Functions)
    - Instruction
    - Organized Research
    - Other Sponsored Activities
    - Other
  - (b) Departmental Administration (excluding Deans)
  - (c) Dean's office
  - (d) Other, as appropriate
- S&W/fringe benefits shall be further identified as follows:

- (a) Faculty and other professional
  - (b) Administrative (e.g., business officers, accountants, budget analysts, budget officers)
  - (c) Technicians (e.g., lab technicians, glass washers)
  - (d) Secretaries and clerical
- \_\_\_ 3. Complete description of allocation method, bases and allocation

sequences (e.g., direct charge equivalent, 3.6 percent allowance). If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS-2 submission, claimed allocation methodology may be referenced to specific section of the DS-2

\_\_\_ 4. Show a detailed example (i.e., illustration of your Direct Charge Equivalent (DCE) methodology) of the allocation process used for one department which has Instruction and Organized Research functions from each of the following schools: Medicine, Arts & Sciences and Engineering, as applicable

*Sponsored Projects Administration (SPA)*

\_\_\_ 1. A summary schedule for each activity (or subpool) included in SPA cost pool

\_\_\_ 2. A schedule of the sponsored projects direct costs in the MTC allocation base

\_\_\_ 3. If a method different from the standard sponsored projects MTC allocation method was used, describe method. Provide justification for its use and a schedule of allocation. If the institution filed a DS-2 submission, claimed allocation methodology may be referenced to specific section of the DS-2

*Library*

\_\_\_ 1. A summary schedule for each activity included in library cost pool. It would show costs by salaries and wages, books, periodicals, and all other non-labor cost categories

\_\_\_ 2. Schedule listing all credits to library costs

\_\_\_ 3. A schedule of Full Time Equivalents (FTE) and salaries and wages in the bases used to allocate library costs to users of library services

\_\_\_ 4. If the standard allocation methodology was not used, describe the alternative method and provide justification for its use. Provide schedules of allocation statistics by function. If school filed a DS-2 submission, claimed allocation methodology may be referenced to specific section of the DS-2

*Student Services*

\_\_\_ 1. If the proposed allocation base(s) differs from the stipulated standard allocation methodology provide:

- (a) Justification for use of a nonstandard allocation methodology;
- (b) Description of allocation procedure; and
- (c) Statistical data to support proposed distribution process

If the institution filed a DS-2 submission, claimed allocation methodology may be referenced to specific section of DS-2.

[FR Doc. 00-11540 Filed 5-8-00; 8:45 am]

BILLING CODE 3110-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of May 8, 2000.

A closed meeting will be held on Thursday, May 11, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Thursday, May 11, 2000 will be:

- Institution and settlement of injunctive actions; and
- Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: May 5, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00-11668 Filed 5-5-00; 1:19 pm]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Javelin Capital Fund, LP ("TD Javelin"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Small Business Investment

Act of 1958, as amended ("the Act"), TD Javelin Capital Fund II, LP ("TD Javelin II"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, and TD Lighthouse Capital Fund, LP ("TD Lighthouse", and together with TD Javelin and TD Javelin II, the "Funds"), 303 Detroit Street, Suite 301, Ann Arbor, Michigan 48104, an applicant for a Federal license under the Act, in connection with the financing of a small concern, are seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). The Funds propose to provide equity financing to t-Breeders, Inc. ("t-Breeders"), One Innovation Drive, Worcester, Massachusetts 01605. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because TD Javelin, an Associate of the Funds, currently owns greater than 10 percent of t-Breeders and therefore t-Breeders is considered an Associate of each of the Funds as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00-11496 Filed 5-8-00; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Javelin Capital Fund, LP ("TD Javelin I"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), and TD Javelin Capital Fund II, LP ("TD Javelin II", and together with TD Javelin I the "Funds"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, in connection with the financing of a small concern, have sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small

Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). The Funds propose to provide equity financing to Prolinx, Inc. ("Prolinx"), 22322 Twentieth Avenue South East, Bothell, Washington 98021. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because TD Javelin I and its associate, Tullis-Dickerson Capital Focus II, LP, currently own greater than 10 percent of Prolinx, and therefore Prolinx is considered an Associate of each of TD Javelin I and TD Javelin II as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00-11498 Filed 5-8-00; 8:45 am]

BILLING CODE 8025-01-P

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Origen Fund, L.P. ("TD Origen"), 150 Washington Avenue, Suite 201, Santa Fe, New Mexico 87501, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), TD Javelin Capital Fund, LP ("TD Javelin I"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, and TD Javelin Capital Fund II, LP ("TD Javelin II"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223 (collectively "the Funds"), in connection with the financing of a small concern, have sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). The Funds propose to provide equity financing to Phase-1 Molecular Toxicology, Inc. ("Phase-1"), 2904 Rodeo Park Drive East, Santa Fe, New Mexico 97505. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the

Regulations because TD Origen and TD Javelin, Associates of the Funds, currently own greater than 10 percent of Phase-1 and therefore Phase-1 is considered an Associate of each of the Funds as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00-11497 Filed 5-8-00; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

[License No. 01/71-0372]

### Zero Stage Capital VI, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, LP, 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Zero Stage Capital VI proposes to provide equity financing to t-Breeders, Inc. ("t-Breeders"), One Innovation Drive, Worcester, Massachusetts 01605. The financing is contemplated for funding growth.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Zero Stage Capital V, LP, an Associate of the Zero Stage Capital VI, currently owns greater than 10 percent of t-Breeders, Inc. and therefore t-Breeders, Inc. is considered an Associate of Zero Stage Capital VI as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00-11495 Filed 5-8-00; 8:45 am]

**BILLING CODE 8025-01-P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503.

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965-4145, or by writing to him at the address listed above.

1. Internet Retirement Insurance Benefit (IRIB) Application—0960-NEW. SSA plans to offer its customers a new Internet service that allows individuals to submit their request for Social Security benefits over the Internet. The information collected will be used by SSA to determine entitlement to retirement insurance benefits. Currently, applicants for retirement insurance benefits complete an SSA-1 by telephone or in person with the assistance of an SSA employee. The IRIB application will enable individuals

to complete the application on their own electronically over the Internet.

Prior to national implementation later this year, SSA plans to pilot the IRIB Internet application process between July 2000 and September 2000 to gather data on:

- the volume of IRIB usage,
- the time required for members of the public to complete the IRIB screens,
- user satisfaction with the process, and the impact of the IRIB process on payment accuracy.

	Pilot	National implementation
Number of Respondents .....	560	139,308
Frequency of Response .....	1	1
Average Burden Per Response (minutes) .....	20	20
Estimated Annual Burden (hours) .....	187	46,436

2. Request for Internet Service—Authentication (RISA)—0960-0596. The information collected on the electronic request for Internet Service—Authentication is used by the Social Security Administration to identify its customers who are requesting Privacy Act protected information. The respondents are members of the public who request services from SSA through the Internet.

*Number of Respondents:* 21,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 1.5 minutes.

*Estimated Annual Burden:* 525 hours.

Dated: April 28, 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer.*

[FR Doc. 00-11476 Filed 5-8-00; 8:45 am]

**BILLING CODE 4191-02-P**

## DEPARTMENT OF STATE

[Public Notice 3296]

### Amendment to Culturally Significant Objects Imported for Exhibition Determinations: "1900: Art at the Crossroads"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and

Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236-1 of November 9, 1999, I hereby determine that an additional object to be included in the exhibit, "1900: Art at the Crossroads," imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object will be imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the additional object at the Guggenheim Museum, New York, NY, from on or about May 18, 2000, to on or about September 10, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of all exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547-0001.

Dated: May 2, 2000.

**William B. Bader,**

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

[FR Doc. 00-11557 Filed 5-8-00; 8:45 am]

**BILLING CODE 4710-08-P**

## DEPARTMENT OF STATE

[Public Notice 3282]

### Advisory Committee on International Communications and Information Policy; Change in Meeting Notice

The Department of State is rescheduling a special meeting of its Advisory Committee on International Communications and Information Policy. The meeting, originally scheduled for Monday, May 15, 2000, is being rescheduled to Monday, June 26, 2000, in order to allow additional time for written submissions.

The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international

organizations with regard to communications and information, and developing country interests.

This special meeting will take the format of a hearing to solicit and receive testimony on the subject of "best practices" used by telecommunications regulators, competition authorities, and legislatures, etc. outside the United States that facilitate competition in the provision of telecommunications services and/or networks.

The purpose of the Advisory Committee soliciting this testimony is to develop a list of these best policies implemented by countries outside the United States that will be helpful to the Department of State and the U.S. Government more broadly in recognizing and promoting pro-competitive telecommunications practices abroad. The intent is that these will provide concrete examples of where and how telecommunications competition has been implemented successfully. These "best practices" may take the form of the adoption of general policies, particular sets of rules, particular pricing regimes, specific enforcement initiatives, a particular form of regulation or specific transition requirement in moving from a monopoly situation to a competitive environment.

The target audience from whom the Advisory Committee would like to solicit this testimony includes the telecommunications and information technology industries, consumer groups, academia, lawyers, and consultants, as well as from the general public.

The Advisory Committee requests that interested parties provide written submissions, not to exceed two pages for each best practice (not counting attachments), that answer the following questions:

#### Best Practice

1. What is the best practice? (Describe it. What competitive issues does it address? How has the practice been pro-competitive?)

2. Who implemented the practice and how transferable does the submitter think it will be to other countries?

3. What next steps can be taken to improve this practice?

4. Identify your name, organization, and contact information (phone number and e-mail address). Please state whether someone from your organization is willing to attend the meeting scheduled for June 26, 2000, at the Department of State in Washington to briefly present this suggestion (3-5 minute presentation depending upon the number of suggestions submitted).

Written material must be submitted electronically to the Executive Secretary of the Advisory Committee, Timothy C. Finton, at <fintontc@state.gov> no later than 5:00 p.m. (Eastern Daylight Time) on Wednesday, June 14. Additionally, hardcopies of submissions may be mailed to Timothy C. Finton at EB/CIP, Room 4826, U.S. Department of State, 2201 C Street, NW., Washington, DC to be received by June 14.

The meeting will be held on Monday, June 26, 2000, from 9:30 a.m.-11:30 a.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647-5385 or <fintontc@state.gov>.

Dated: May 4, 2000.

**Timothy C. Finton,**

*Executive Secretary, Advisory Committee on International Communications and Information Policy, Department of State.*

[FR Doc. 00-11667 Filed 5-8-00; 8:45 am]

**BILLING CODE 4710-45-U**

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1519)

**TIME AND DATE:** 9 am (CDT), May 11, 2000.

**PLACE:** Adam's Mark Memphis Hotel, Tennessee A Room, 939 Ridge lake Boulevard, Memphis, Tennessee.

**STATUS:** Open.

#### Agenda

Approval of minutes of meeting held on April 19, 2000.

*New Business*

## C—Energy

C1. Contract with General Electric Company for the manufacture and turnkey installation of new combined-cycle power plant and cogeneration projects for 2003.

C2. Supplement to indefinite quantity Contract No. 00P61-259355-001 with Thomas & Betts Corporation for transmission and substation steel components and structures.

## E—Real Property Transactions

E1. Grant of a permanent easement for a road to the City of Decatur, Alabama, affecting approximately 2.2 acres of land on Wheeler Reservoir in Morgan County, Alabama (Tract No. XTWR-111H).

E2. Grant of a permanent easement for a highway improvement project to the Tennessee Department of Transportation, affecting approximately 3.1 acres of land on Norris Reservoir in Union County, Tennessee (Tract No. XTNR-112H).

## Information Items

1. Approval for TVA to pay the first year of membership dues in the TVA Retirees Association for TVA retirees.

For more information: Please call TVA Public Relations at (423-632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999. People who plan to attend the meeting and have special needs should call (865) 632-6000.

Dated: May 4, 2000.

**Edward S. Christenbury,**

*General Counsel and Secretary.*

[FR Doc. 00-11673 Filed 5-5-00; 2:08 pm]

**BILLING CODE 8120-08-M**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Seven Current Public Collections of Information**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on seven currently approved public information collections which will be submitted to OMB for renewal.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF-100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Street at the above address or on (202) 267-9895.

**SUPPLEMENTARY INFORMATION:** The FAA solicits comments on the following seven current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the information collection activities which will be submitted to OMB for review and renewal:

1. 2120-0045, Bird/Other Wildlife Strike. The data collection is used by the FAA and the International Civil Aviation Organization (ICAO) to develop standards to cope with bird and other wildlife hazards to aircraft injury to personnel, and for wildlife habitat control methods on or adjacent to airports. The Bird/Other Wildlife-Strike Reports form a statistical base in providing assistance and monitoring of the overall national bird hazard program. The responses are on a voluntary basis from pilots or others seeing bird or other wildlife strikes to aircraft. It is estimated to take 5 minutes or less to complete the form. Based on previous counts, the estimated annual burden is 125 hours.

2. 2120-0557, Passenger Facility Charge. The Aviation Safety and Capacity Expansion Act of 1990 (Public Law 101-508) authorizes airports to impose passenger facility charges (PFC). The final rule (14 CFR 158) implementing this Act was effective June 28, 1991. This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the DOT/FAA. This program provides additional funding for airport development which is needed now and in the future. The respondents are air carriers and public agencies. The total annual burden is estimated to be 25,500 hours.

3. 2120-0559, Aviation Research Grants Program. The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not for profit organizations, and profit organizations

for security research. The respondents are grantees. The estimated annual burden is 2800 hours.

4. 2120-0563, Part 161—Notice and Approval of Airport Noise and Access Restrictions, Part 161. The Airport Noise and Capacity Act of 1990, Public Law 101-508, mandates the formulation of a national noise policy. One part of that mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and Stage 3 aircraft. Respondents are airport operation of proposing voluntary agreements and/or mandatory restrictions on Stage 2 and Stage 3 aircraft operations and aircraft operators that request reevaluation of a restriction. There are an estimated 18 respondents with an average annual burden of 32,000 hours.

5. 2120-0614, Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes. This information collection pertains to specific reporting requirements for affected operators under parts 121 and 135. A new paragraph was added to sections 121.314 and 135.169 to require each certificate holder to report, on a quarterly basis, the serial numbers of the airplanes in that holder's fleet in which all Class D compartments have been retrofitted to meet Class C or E requirements, and the serial numbers of airplanes that have Class D compartments yet to be retrofitted. It is estimated that there would be 130 certificate holder respondents for an annual hourly burden of 1000 hours.

6. 2120-0616, Revisions to Digital Flight Data Recorders. This rule requires that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions follow a series of safety recommendations issued by the NTSB and the FAA's decision that the FDR rules should be revised to upgrade recorder capabilities in most transport airplanes. The revisions require additional information to be collected to enable more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modifications before an accident or incident occurs. The burden on the public is the cost of retrofitting the remaining aircraft.

7. 2120-0619, Commercial Passenger-Carrying Operations in Single Engine Aircraft Under Instrument Flight Rules. The information and recordkeeping requirements will be used by the operator to ensure that all maintenance performed on the standby vacuum and electrical systems is complete, accurate, and standardized to ensure continued airworthiness. The operator will also

use the information on the engine trend monitoring system to ensure engine reliability by analyzing the trend indicators and performing inspections or replacing engine parts as indicated. The respondents are an estimated 1800 part 135 operators. The estimated annual recordkeeping burden is 10,800 hours.

Issued in Washington, DC, on May 2, 2000.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF-100.*

[FR Doc. 00-11492 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Notice of Availability and Public Hearing of the Draft Supplemental Environmental Impact Statement on the Buffalo Inner Harbor Project, New York

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of availability and public hearing of the draft supplemental environmental impact statement.

**SUMMARY:** The Federal Transit Administration (FTA) is issuing this notice to advise the public and interested agencies that a Draft Supplemental Environmental Impact Statement (Draft SEIS) will be available on the Buffalo Inner Harbor Project. This Draft SEIS is in response to a court order and is limited in scope to the issue of historic preservation. The Draft SEIS will address events and information that became available subsequent to the Final EIS (FEIS), which was issued February 12, 1999.

The Draft SEIS was prepared pursuant to an order filed in a civil action filed by Preservation Coalition on October 6, 1999, in the United States District Court for the Western District of New York under civil action number 99-CV-745S against FTA, NFTA, the New York State Thruway Authority, Empire State Development Corporation (ESDC), and the New York State Office of Parks, Recreation, and Historic Preservation. The Preservation Coalition challenged the Buffalo Inner Harbor Project on environmental and historic preservation grounds. On March 31, 2000, District Court Judge William M. Skretny ordered that a SEIS be prepared to consider the information learned during archaeological investigations conducted after the FEIS.

The court established a compressed timetable for the public comment period

on the Draft SEIS. In accordance with the order, the Draft SEIS will be available for public comment between May 10, 2000, and May 31, 2000. Written comments must be received by 5:00 PM on May 31, 2000. A public hearing on the project will be held on May 24, 2000, from 7 to 9:00 p.m.

**DATES:** Comment due date/time: May 31, 2000, 5:00 PM. Public hearing date/time: May 24, 2000, 7-9 p.m.

**ADDRESSES:** Written comments are to be sent to Ruta Dzenis, AICP, Project Director, Empire State Development Corporation, 420 Main Street, Suite 717 Liberty Building, Buffalo, NY 14202. The address of the public hearing is Erie County Community College, Downtown Campus, Main Auditorium, Buffalo, NY 14203. The Auditorium entrance is along the Clinton Street side of the building and is accessible to the disabled. If there is a need for a translator for the hearing impaired or other special accommodations please notify Ms. Mary Coleman, Empire State Development Corporation, at (716) 856-8111 by Tuesday, May 16, 2000. Copies of the Draft SEIS are available by contacting Ms. Coleman. Copies of the draft SEIS are also available for review at the Buffalo and Erie County Public Library, Central Branch, Lafayette Square, Buffalo, NY 14202; the Niagara Falls Public Library, 1425 Main Street, Niagara Falls, NY 14305; and the University of Buffalo School of Architecture and Planning Library, Hayes Hall, South Campus, Buffalo NY 14216.

**FOR FURTHER INFORMATION CONTACT:** Anthony G. Carr, FTA Region II, One Bowling Green, Room 429; New York, NY 10004. Telephone (212) 668-2170.

Following the public comment period, a Final SEIS that responds to the comments will be prepared and made available to the public.

Issued on: May 3, 2000.

**Letitia Thompson,**

*Regional Administrator, Federal Transit Administration, Region II.*

[FR Doc. 00-11484 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2000-7111]

#### Notice of Receipt of Petition for Decision That all Nonconforming 1992-1994 Mercedes-Benz SE and SEL Passenger Car Models Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that all nonconforming 1992-1994 Mercedes-Benz SE and SEL passenger car models are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that all 1992-1994 Mercedes-Benz SE and SEL passenger car models that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is June 8, 2000.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to

conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland ("J.K.") (Registered Importer 90-006) has petitioned NHTSA to decide whether all nonconforming 1992-1994 Mercedes-Benz SE and SEL passenger car models are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are all 1992-1994 Mercedes-Benz SE and SEL passenger car models that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1992-1994 Mercedes-Benz SE and SEL passenger car models to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1992-1994 Mercedes-Benz SE and SEL passenger car models, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1992-1994 Mercedes-Benz SE and SEL passenger car models are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* \* \* \*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205

*Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1992-1994 Mercedes-Benz SE and SEL passenger car models comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems*: installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of U.S.-model

doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 2000.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*  
[FR Doc. 00-11485 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

Docket No. NHTSA-2000-7225

#### Notice of Receipt of Petition for Decision That Nonconforming 1995-1998 Mercedes-Benz S Class Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1995-1998 Mercedes-Benz S Class passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995-1998 Mercedes-Benz S Class passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United

States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is June 8, 2000.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, Maryland ("J.K.") (Registered Importer 90-006) has petitioned NHTSA to decide whether 1995-1998 Mercedes-Benz S Class passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995-1998 Mercedes-Benz S Class passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as

conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995-1998 Mercedes-Benz S Class passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1995-1998 Mercedes-Benz S Class passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995-1998 Mercedes-Benz S Class passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* \* \* \*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1995-1998 Mercedes-Benz S Class passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a

U.S.-model center high mounted stop lamp assembly.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems*: installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 2000.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 00-11486 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. RSPA-00-7283; Notice No. 00-03]

#### Hazardous Materials Safety: Meeting for UN Packaging Certification Agencies

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** RSPA is hosting a meeting for its designated UN packaging certification agencies. This meeting provides an opportunity to discuss testing and certification requirements for UN packagings and to disseminate information regarding recent regulatory developments. This meeting is being held in conjunction with an RSPA-sponsored Hazardous Materials Multimodal Training Seminar on June 13 and 14, 2000.

**DATES:** The meeting will be held on Wednesday, June 14, 2000, from 9 am. to 4:30 pm; however, the meeting may end prior to 4:30 pm, depending upon public interest.

**ADDRESSES:** The meeting will be held at the Indian Lakes Resort, 250 W. Schick Road, Bloomingdale, IL 60108 (630-529-0200). For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Diane LaValle at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Christine Whitney, Office of Hazardous Materials Exemptions and Approvals, phone (202) 366-4512 or Diane LaValle, Office of Hazardous Materials Standards, phone (202) 366-8553, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:** On June 14, 2000, RSPA's Office of Hazardous Materials Safety ("we") will host a meeting for designated UN packaging certification agencies (*i.e.*, third party labs). This meeting will provide an opportunity for us to exchange

information with third party labs concerning testing and certification requirements for UN packagings. We will also provide an update on the latest regulatory developments.

The meeting will be held in the Chicago, Illinois, area, in conjunction with a two-day multi-modal hazardous materials seminar on June 13 and 14. Because of space limitations, attendance at the third party lab meeting will be on a "first come-first served" basis. To confirm attendance, please call Christine Whitney or Diane LaValle at the phone numbers listed under **FOR FURTHER INFORMATION CONTACT**. Third party labs do not need to confirm attendance. Persons interested in participating in this public meeting need not be registered for the Hazardous Materials Multimodal Training Seminar.

This is an informal meeting intended to produce a dialogue between us and the third party labs concerning performance-oriented package testing and certification. There will be no transcript of the meeting; however, we will prepare minutes of the meeting and written questions and answers developed in response to issues raised. This information will be made available on the HazMat Safety Website (<http://hazmat.dot.gov>).

Issued in Washington, DC on May 4, 2000.

**Robert A. McGuire,**

*Acting Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00-11580 Filed 5-8-00; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 1041-T

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041-T, Allocation of Estimated Tax Payments to Beneficiaries.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* Allocation of Estimated Tax Payments to Beneficiaries.

*OMB Number:* 1545-1020.

*Form Number:* 1041-T.

*Abstract:* This form allows a trustee of a trust or an executor of an estate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 1,000.

*Estimated Time Per Respondent:* 1 hour, 1 minute.

*Estimated Total Annual Burden Hours:* 1,010.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00-11590 Filed 5-8-00; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 4970

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form

4970, Tax on Accumulation Distribution of Trusts.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax on Accumulation Distribution of Trusts.

*OMB Number:* 1545-0192.

*Form Number:* 4970.

*Abstract:* Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Responses:* 30,000.

*Estimated Time Per Respondent:* 3 hours, 13 minutes.

*Estimated Total Annual Burden Hours:* 96,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00-11591 Filed 5-8-00; 8:45 am]

**BILLING CODE 4830-01-P**

# Corrections

Federal Register

Vol. 65, No. 90

Tuesday, May 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

Thursday, May 4, 2000, make the following correction:

On page 25972, in the third column, in the first full paragraph, in the 11th line, "July 10th" should read "June 5th".

[FR Doc. C0-11071 Filed 5-8-00; 8:45 am]

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 110499B]

RIN 0648-AM79

#### Atlantic Highly Migratory Species; Pelagic Longline Management

##### Correction

In proposed rule document 00-10310 beginning on page 24440 in the issue of Wednesday, April 26, 2000, make the following correction:

On page 24441, the table should appear as follows:

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP); Initiation of a Review to Consider the Designation of Nigeria as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

#### Correction

In notice document 00-11071 appearing on page 25972 in the issue of

Discards and target species	No effort redistribution model (percent)	Redistribution of effort model (percent)
Swordfish Discards .....	-5.31	-4.09
Blue Marlin Discards .....	-1.36	1.16
White Marlin Discards .....	-1.84	1.07
Sailfish Discards .....	-5.20	-0.75
Large Coastal Shark Discards .....	-6.51	-5.42
Swordfish Kept .....	-2.45	-1.69
BAYS Tunas Kept .....	-2.04	1.35
Dolphin (Mahi) Kept .....	-3.69	-1.37
Pelagic Sharks Kept .....	-2.38	-1.82

[FR Doc. C0-10310 Filed 5-8-00; 8:45 am]

BILLING CODE 1505-01-D



# Federal Register

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**Tuesday,  
May 9, 2000**

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**Part II**

**United States  
Sentencing  
Commission**

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**Sentencing Guidelines for United States  
Courts; Notice**

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of: (1) Promulgation of temporary, emergency amendment to the sentencing guidelines for copyright and trademark infringement, effective May 1, 2000; (2) submission to Congress of amendments to the sentencing guidelines; and (3) request for comment.

**SUMMARY:** The United States Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to the No Electronic Theft (NET) Act, Pub. L. 105-147, the Commission has promulgated a temporary, emergency amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark) and accompanying commentary; (2) pursuant to its authority under 28 U.S.C. 994(a) and (p) and several congressional directives, the Commission has promulgated additional, non-emergency amendments to the sentencing guidelines, policy statements, commentary, and statutory index; and (3) the Commission requests public comment regarding whether the Commission should specify any of the non-emergency amendments for retroactive application to previously sentenced defendants.

**DATES:** The Commission has specified an effective date of May 1, 2000, for the emergency NET Act amendment and an effective date of November 1, 2000, for all non-emergency amendments to the sentencing guidelines, policy statements, commentary, and statutory index. Comments regarding whether the Commission should specify any of the non-emergency amendments for retroactive application to previously sentenced defendants should be received by the Commission not later than July 7, 2000.

**ADDRESSES:** Comments should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2-500, South Lobby, Washington, DC, 20002-8002, Attn: Public Affairs.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, 202-502-4590.

#### SUPPLEMENTARY INFORMATION:

##### (1) Emergency NET Act Amendment

The NET Act directed the Commission to: (A) Ensure that the applicable guideline range for a crime committed against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code,

and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime; and (B) ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed. The NET Act, as clarified by the Digital Theft Deterrence and Copyright Damages Improvement Act of 1998, Pub. L. 106-160, required the Commission to promulgate a temporary, emergency guideline amendment not later than April 6, 2000. In December 1999, the Commission published three options for promulgating an emergency amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark) and accompanying commentary to implement the NET Act directive. See 64 FR 72129, Dec. 23, 1999. After a public hearing (which, in part, focused on proposed options to implement the NET Act) and a review of additional public comment, the Commission passed an amendment on April 3, 2000, that responds to the directive. The amendment makes a number of modifications to the guideline, including changes to the monetary calculation found in § 2B5.3 and the addition of several mitigating and aggravating factors as a means of providing just and proportionate punishment while also seeking to achieve sufficient deterrence. The Commission specified an effective date of May 1, 2000, for this amendment.

##### (2) Non-Emergency Amendments

Section 994 of title 28, United States Code, empowers the Commission to promulgate sentencing guidelines and policy statements for federal courts. See 28 U.S.C. 994(a). Additionally, 28 U.S.C. 994 directs the Commission periodically to review and revise guidelines previously promulgated (see 28 U.S.C. 994(o)) and authorizes it to submit guideline amendments to the Congress at or after the beginning of a regular session of Congress but not later than May 1 (see 18 U.S.C. 994(p)). Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on December 23, 1999 (see 64 FR 72129), January 18, 2000 (see 65 FR 2663), and February 11, 2000 (see 65 FR 7080). The Commission held a public hearing on the proposed amendments in Washington, D.C., on March 23, 2000. After a review of hearing testimony and

additional public comment, the Commission promulgated the amendments set forth below (including an amendment to make permanent the temporary, emergency NET Act amendment discussed in section (1)). On May 1, 2000, the Commission submitted these amendments to Congress with an effective date of November 1, 2000.

##### (3) Retroactive Application

The Commission requests comment regarding which, if any, of the non-emergency amendments submitted to Congress that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). For example, should the Commission make retroactive Amendments 8, 9, or 10, as set forth below, each of which may lower the guideline range for firearm offenders in certain situations?

**Authority:** 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

**Diana E. Murphy,**

*Chair.*

##### Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, the United States Sentencing Commission hereby submits to the Congress the following amendments to the sentencing guidelines and the reasons therefor. As authorized by such section, the Commission specifies an effective date of November 1, 2000, for these amendments.

##### *Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary*

1. *Amendment:* Section 1B1.1 is amended by striking subsection (a) in its entirety and inserting:

“(a) Determine, pursuant to § 1B1.2 (Applicable Guidelines), the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. See § 1B1.2.”.

Section 1B1.2(a) is amended by striking “most” each place it appears; by striking “Provided, however” and inserting “However”; and by adding at the end the following:

“Refer to the Statutory Index (Appendix A) to determine the Chapter Two offense guideline, referenced in the Statutory Index for the offense of conviction. If the offense involved a conspiracy, attempt, or solicitation, refer to § 2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline

referenced in the Statutory Index for the substantive offense. For statutory provisions not listed in the Statutory Index, use the most analogous guideline. See § 2X5.1 (Other Offenses). The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. See § 1B1.9 (Class B or C Misdemeanors and Infractions).”

The Commentary to § 1B1.2 captioned “Application Notes” is amended by striking the first paragraph of Note 1 and inserting the following:

“This section provides the basic rules for determining the guidelines applicable to the offense conduct under Chapter Two (Offense Conduct). The court is to use the Chapter Two guideline section referenced in the Statutory Index (Appendix A) for the offense of conviction. However, (A) in the case of a plea agreement containing a stipulation that specifically establishes a more serious offense than the offense of conviction, the Chapter Two offense guideline section applicable to the stipulated offense is to be used; and (B) for statutory provisions not listed in the Statutory Index, the most analogous guideline, determined pursuant to § 2X5.1 (Other Offenses), is to be used.

In the case of a particular statute that proscribes only a single type of criminal conduct, the offense of conviction and the conduct proscribed by the statute will coincide, and the Statutory Index will specify only one offense guideline for that offense of conviction. In the case of a particular statute that proscribes a variety of conduct that might constitute the subject of different offense guidelines, the Statutory Index may specify more than one offense guideline for that particular statute, and the court will determine which of the referenced guideline sections is most appropriate for the offense conduct charged in the count of which the defendant was convicted. If the offense involved a conspiracy, attempt, or solicitation, refer to § 2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline referenced in the Statutory Index for the substantive offense. For statutory provisions not listed in the Statutory Index, the most analogous guideline is to be used. See § 2X5.1 (Other Offenses).”

The Commentary to § 1B1.2 captioned “Application Notes” is amended by striking Note 3 in its entirety; and by redesignating Notes 4 and 5 as Notes 3 and 4, respectively.

The Commentary to § 2D1.2 captioned “Application Note” is amended in Note 1 by striking “Where” and inserting the following:

“This guideline applies only in a case in which the defendant is convicted of a statutory violation of drug trafficking in a protected location or involving an underage or pregnant individual (including an attempt or conspiracy to commit such a violation) or in a case in which the defendant stipulated to such a statutory violation. See § 1B1.2(a). In a case involving such a conviction but in which”

Appendix A (Statutory Index) is amended by striking the entire text of the “Introduction” and inserting the following:

“This index specifies the offense guideline section(s) in Chapter Two (Offense Conduct) applicable to the statute of conviction. If more than one guideline section is referenced for the particular statute, use the guideline most appropriate for the offense conduct charged in the count of which the defendant was convicted. For the rules governing the determination of the offense guideline section(s) from Chapter Two, and for any exceptions to those rules, see § 1B1.2 (Applicable Guidelines).”

The Commentary to § 2H1.1 captioned “Application Notes” is amended in Note 1 in the second paragraph by striking “Application Note 5” and inserting “Application Note 4”.

*Reason for Amendment:* This amendment addresses a circuit conflict regarding whether the enhanced penalties in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only in a case in which the defendant was convicted of an offense referenced to that guideline or, alternatively, in any case in which the defendant’s relevant conduct included drug sales in a protected location or involving a protected individual. Compare *United States v. Chandler*, 125 F.3d 892, 897–98 (5th Cir. 1997) (“First, utilizing the Statutory Index located in Appendix A, the court determines the offense guideline section ‘most applicable to the offense of conviction.’” Once the appropriate guideline is identified, a court can take relevant conduct into account only as it relates to factors set forth in that guideline); *United States v. Locklear*, 24 F.3d 641 (4th Cir. 1994) (finding that § 2D1.2 does not apply to convictions under 21 U.S.C. 841 based on the fact that the commentary to § 2D1.2 lists as the “Statutory Provisions” to which it is applicable 21 U.S.C. 859, 860, and 861, but not § 841. “[S]ection 2D1.2 is intended not to identify a specific offense characteristic which would, where applicable, increase the offense level over the base level assigned by

§ 2D1.1, but rather to define the base offense level for violations of 21 U.S.C. 859, 860 and 861.”); *United States v. Saavedra*, 148 F.3d 1311 (11th Cir. 1998) (defendant’s uncharged but relevant conduct is actually irrelevant to determining the sentencing guideline applicable to the defendant’s offense; such conduct is properly considered only after the applicable guideline has been selected when the court is analyzing the various sentencing considerations within the guideline chosen, such as the base offense level, specific offense characteristics, and any cross references), with *United States v. Clay*, 117 F.3d 317 (6th Cir.), cert. denied, 118 S. Ct. 395 (1997) (applying § 2D1.2 to defendant convicted only of possession with intent to distribute under 21 U.S.C. 841 but not convicted of any statute referenced to § 2D1.2 based on underlying facts indicating defendant involved a juvenile in drug sales); *United States v. Oppedahl*, 998 F.2d 584 (8th Cir. 1993) (applying § 2D1.2 to defendant convicted of conspiracy to distribute and possess with intent to distribute based on fact that defendant’s relevant conduct involved distribution within 1,000 feet of a school); *United States v. Robles*, 814 F. Supp. 1249 (E.D. Pa), aff’d (unpub.), 8 F.3d 814 (3d Cir. 1993) (looking to relevant conduct to determine appropriate guideline).

In promulgating this amendment, the Commission also was aware of case law that raises a similar issue regarding selection of a Chapter Two (Offense Conduct) guideline, different from that referenced in the Statutory Index (Appendix A), based on factors other than the conduct charged in the offense of conviction. See *United States v. Smith*, 186 F.3d 290 (3d Cir. 1999) (determining that § 2F1.1 (Fraud and Deceit) was most appropriate guideline rather than the listed guideline of § 2S1.1 (Laundering of Monetary Instruments)); *United States v. Brunson*, 882 F.2d 151, 157 (5th Cir. 1989) (“It is not completely clear to us under what circumstances the Commission contemplated deviation from the suggested guidelines for an ‘atypical’ case.”).

The amendment modifies §§ 1B1.1(a), 1B1.2(a), and the Statutory Index’s introductory commentary to clarify the inter-relationship among these provisions. The clarification is intended to emphasize that the sentencing court must apply the offense guideline referenced in the Statutory Index for the statute of conviction unless the case falls within the limited “stipulation” exception set forth in § 1B1.2(a). Therefore, in order for the enhanced

penalties in § 2D1.2 to apply, the defendant must be convicted of an offense referenced to § 2D1.2, rather than simply have engaged in conduct described by that guideline. Furthermore, the amendment deletes Application Note 3 of § 1B1.2 (Applicable Guidelines), which provided that in many instances it would be appropriate for the court to consider the actual conduct of the offender, even if such conduct did not constitute an element of the offense. This application note describes a consideration that is more appropriate when applying § 1B1.3 (Relevant Conduct), and its current placement in § 1B1.2 apparently has caused confusion in applying that guideline's principles to determine the offense conduct guideline in Chapter Two most appropriate for the offense of conviction. In particular, the note has been used by some courts to permit a court to decline to use the offense guideline referenced in the Statutory Index in cases that were allegedly "atypical" or "outside the heartland." See *United States v. Smith*, supra.

Due to the absence of sufficient data, the Commission decided to defer to another amendment cycle the question of whether to delete § 2D1.2 and add an enhancement to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) for either (1) the real offense conduct of selling drugs in protected locations or involving protected individuals; or (2) a conviction for such conduct.

2. *Amendment:* Section 2A3.1(b) is amended by adding at the end the following:

"(6) If, to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, or if, to facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, the offense involved (A) the knowing misrepresentation of a participant's identity; or (B) the use of a computer or an Internet-access device, increase by 2 levels."

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by inserting after "For purposes of this guideline—" the following:

'Minor' means an individual who had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role)."

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by inserting after "the base offense level under subsection (a)." the following paragraph:

"Prohibited sexual conduct" (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography. 'Child pornography' has the meaning given that term in 18 U.S.C. 2256(8)."

The Commentary to § 2A3.1 captioned "Application Notes" is amended by redesignating Notes 4 through 6 as Notes 5 through 7, respectively; and by inserting after Note 3 the following:

"4. The enhancement in subsection (b)(6)(A) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(6)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(6)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

Subsection (b)(6)(B) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site."

Chapter Two, Part A, Subpart 3 is amended by striking § 2A3.2 in its entirety and inserting the following:

"§ 2A3.2. Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts

(a) Base Offense Level:

(1) 18, if the offense involved a violation of chapter 117 of title 18, United States Code; or

(2) 15, otherwise.

(b) Specific Offense Characteristics:

(1) If the victim was in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(2) If subsection (b)(1) does not apply; and—

(A) the offense involved the knowing misrepresentation of a participant's identity to (i) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (ii) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct; or

(B) a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct, increase by 2 levels.

(3) If a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct, increase by 2 levels.

(4) If (A) subsection (a)(1) applies; and (B) none of subsections (b)(1) through (b)(3) applies, decrease by 3 levels.

(c) Cross Reference:

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the victim had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the "consent" of the victim.

#### Commentary

*Statutory Provision:* 18 U.S.C. 2243(a). For additional statutory provision(s), see Appendix A (Statutory Index).

#### Application Notes:

1. For purposes of this guideline—'Participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Victim' means (A) an individual who, except as provided in subdivision (B),

had not attained the age of 16 years; or (B) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 16 years.

2. If the defendant committed the criminal sexual act in furtherance of a commercial scheme such as pandering, transporting persons for the purpose of prostitution, or the production of pornography, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).

3. Subsection (b)(1) is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

4. If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

5. The enhancement in subsection (b)(2)(A) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct. Subsection (b)(2)(A) is intended to apply only to misrepresentations made directly to the victim or to a person who exercises custody, care, or supervisory control of the victim. Accordingly, the enhancement in subsection (b)(2)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the victim.

The misrepresentation to which the enhancement in subsection (b)(2)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

In determining whether subsection (b)(2)(B) applies, the court should

closely consider the facts of the case to determine whether a participant's influence over the victim compromised the voluntariness of the victim's behavior.

In a case in which a participant is at least 10 years older than the victim, there shall be a rebuttable presumption, for purposes of subsection (b)(2)(B), that such participant unduly influenced the victim to engage in prohibited sexual conduct. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the victim.

If the victim was threatened or placed in fear, the cross reference in subsection (c)(1) will apply.

6. Subsection (b)(3) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with the victim or with a person who exercises custody, care, or supervisory control of the victim. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the victim from an airline's Internet site.

7. Subsection (c)(1) provides a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. 2241 or 2242. For example, the cross reference to 2A3.1 shall apply if (A) the victim had not attained the age of 12 years (*see* 18 U.S.C. 2241(c)); (B) the victim had attained the age of 12 years but not attained the age of 16 years, and was placed in fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2241(a),(c)); or (C) the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2242(1)).

8. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted.

*Background:* This section applies to offenses involving the criminal sexual abuse of an individual who had not attained the age of 16 years. While this section applies to consensual sexual acts prosecuted under 18 U.S.C. 2243(a) that would be lawful but for the age of the victim, it also applies to cases,

prosecuted under 18 U.S.C. 2243(a) or chapter 117 of title 18, United States Code, in which a participant took active measure(s) to unduly influence the victim to engage in prohibited sexual conduct and, thus, the voluntariness of the victim's behavior was compromised. A two-level enhancement is provided in subsection (b)(2) for such cases. It is assumed that at least a four-year age difference exists between the victim and the defendant, as specified in 18 U.S.C. 2243(a). A two-level enhancement is provided in subsection (b)(1) for a defendant who victimizes a minor under his supervision or care. However, if the victim had not attained the age of 12 years, § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) will apply, regardless of the "consent" of the victim."

Section 2A3.3 is amended by inserting after subsection (a) the following:

“(b) Specific Offense Characteristics

(1) If the offense involved the knowing misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels.

(2) If a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels.”

The Commentary to § 2A3.3 captioned “Application Notes” is amended by striking Note 1 in its entirety and inserting the following:

“1. For purposes of this guideline—  
‘Minor’ means an individual who had not attained the age of 18 years.

‘Participant’ has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

‘Prohibited sexual conduct’ has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

‘Ward’ means a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant.”;

by redesignating Note 2 as Note 4; and by inserting after Note 1 the following:

“2. The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice,

or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(1) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(1) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(1) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

3. Subsection (b)(2) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(2) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site."

Section 2A3.4(b) is amended by adding at the end the following:

"(4) If the offense involved the knowing misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels.

(5) If a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels."

Section 2A3.4(c)(2) is amended by inserting "Under the Age of Sixteen Years" before "(Statutory Rape)".

The Commentary to § 2A3.4 captioned "Application Notes" is amended by redesignating Note 5 as Note 8; by redesignating Notes 1 through 4 as Notes 2 through 5, respectively; by inserting before redesignated Note 2 (formerly Note 1) the following:

"1. For purposes of this guideline—  
'Minor' means an individual who had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse)."; and by adding after redesignated Note 5 (formerly Note 4), the following:

"6. The enhancement in subsection (b)(4) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(4) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(4) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(4) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

7. Subsection (b)(5) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(5) is intended to apply only to the use of a computer or an

Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site."

Chapter Two, Part G, Subpart One is amended by striking the text of the title to Subpart One in its entirety and inserting the following:

"PROMOTING PROSTITUTION OR PROHIBITED SEXUAL CONDUCT"; and by striking § 2G1.1 in its entirety and inserting the following:

"§ 2G1.1. Promoting Prostitution or Prohibited Sexual Conduct

(a) Base Offense Level:

(1) 19, if the offense involved a minor; or

(2) 14, otherwise.

(b) Specific Offense Characteristics:

(1) If the offense involved (A) prostitution; and (B) the use of physical force, or coercion by threats or drugs or in any manner, increase by 4 levels.

(2) If the offense involved a victim who had (A) not attained the age of 12 years, increase by 4 levels; or (B) attained the age of 12 years but not attained the age of 16 years, increase by 2 levels.

(3) If subsection (b)(2) applies; and—

(A) the defendant was a parent, relative, or legal guardian of the victim; or

(B) the victim was otherwise in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(4) If subsection (b)(3) does not apply; and—

(A) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or

(B) a participant otherwise unduly influenced a minor to engage in prostitution,

increase by 2 levels.

(5) If a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor, increase by 2 levels.

(c) Cross References:

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for

the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the offense involved criminal sexual abuse of a minor who had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the 'consent' of the victim.

(3) If the offense did not involve promoting prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, apply § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate.

(d) Special Instruction:

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of prostitution or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

*Statutory Provisions:* 8 U.S.C. 1328; 18 U.S.C. 2421, 2422, 2423(a), 2425.

*Application Notes:*

1. For purposes of this guideline—'Minor' means an individual who had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Promoting prostitution' means persuading, inducing, enticing, or coercing a person to engage in prostitution, or to travel to engage in, prostitution.

'Victim' means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, prostitution or prohibited sexual conduct, whether or not the person consented to the prostitution or prohibited sexual conduct. Accordingly, 'victim' may include an undercover law enforcement officer.

2. Subsection (b)(1) provides an enhancement for physical force, or coercion, that occurs as part of a prostitution offense and anticipates no

bodily injury. If bodily injury results, an upward departure may be warranted. See Chapter Five, Part K (Departures). For purposes of subsection (b)(1), 'coercion' includes any form of conduct that negates the voluntariness of the behavior of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of an adult victim, rather than a victim less than 18 years of age, this characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of prostitution or prohibited sexual conduct in respect to another victim.

4. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, prostitution or prohibited sexual conduct is to be treated as a separate victim.

Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of prostitution or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

5. Subsection (b)(3) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

6. If the enhancement in subsection (b)(3) applies, do not apply subsection (b)(4) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

7. The enhancement in subsection (b)(4)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution. Subsection

(b)(4)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(4)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(4)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution.

Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

In determining whether subsection (b)(4)(B) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption, for purposes of subsection (b)(4)(B), that such participant unduly influenced the minor to engage in prostitution. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the minor.

8. Subsection (b)(5) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor. Subsection (b)(5)(A) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(5)(A) would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.

9. The cross reference in subsection (c)(1) is to be construed broadly to include all instances in which the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for the purpose of

producing any visual depiction of such conduct. For purposes of subsection (c)(1), "sexually explicit conduct" has the meaning given that term in 18 U.S.C. 2256.

10. Subsection (c)(2) provides a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. 2241 or 2242. For example, the cross reference to § 2A3.1 shall apply if the offense involved criminal sexual abuse; and (A) the victim had not attained the age of 12 years (*see* 18 U.S.C. 2241(c)); (B) the victim had attained the age of 12 years but had not attained the age of 16 years, and was placed in fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2241(a),(c)); or (C) the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2242(1)).

11. The cross reference in subsection (c)(3) addresses the case in which the offense did not involve promoting prostitution, neither subsection (c)(1) nor (c)(2) is applicable, and the offense involved prohibited sexual conduct other than the conduct covered by subsection (c)(1) or (c)(2). In such case, the guideline for the underlying prohibited sexual conduct is to be used; *i.e.*, § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact).

*Background:* This guideline covers offenses under chapter 117 of title 18, United States Code. Those offenses involve promoting prostitution or prohibited sexual conduct through a variety of means. Offenses that involve promoting prostitution under chapter 117 of such title are sentenced under this guideline, unless other prohibited sexual conduct occurs as part of the prostitution offense, in which case one of the cross references would apply. Offenses under chapter 117 of such title that do not involve promoting prostitution are to be sentenced under § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit

Abusive Sexual Contact), as appropriate, pursuant to the cross references provided in subsection (c)."

Section 2G2.1(b) is amended by striking subdivision (3) in its entirety and inserting the following:

"(3) If, for the purpose of producing sexually explicit material, the offense involved (A) the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage sexually explicit conduct; or (B) the use of a computer or an Internet-access device to (i) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct, or to otherwise solicit participation by a minor in such conduct; or (ii) solicit participation with a minor in sexually explicit conduct, increase by 2 levels."

The Commentary to § 2G2.1 captioned "Application Notes" is amended by redesignating Notes 1 through 3 as Notes 2 through 4, respectively; by inserting before redesignated Note 2 (formerly Note 1) the following:

"1. For purposes of this guideline, "minor" means an individual who had not attained the age of 18 years."; and by adding at the end the following:

"5. The enhancement in subsection (b)(3)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Subsection (b)(3)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(3)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(3)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

Subsection (b)(3)(B)(i) provides an enhancement if a computer or an Internet-access device was used to persuade, induce, entice, coerce, or

facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material or otherwise to solicit participation by a minor in such conduct for such purpose. Subsection (b)(3)(B)(i) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site."

Section 2G2.2(b) is amended by striking subdivision (2) in its entirety and inserting the following:

"(2) (Apply the Greatest) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(E) Distribution other than distribution described in subdivisions (A) through

(D), increase by 2 levels."

The Commentary to § 2G2.2 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. For purposes of this guideline—  
'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the 'thing of value' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who had not attained the age of 18 years.

'Pattern of activity involving the sexual abuse or exploitation of a minor' means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same or different victims; or (C) resulted in a conviction for such conduct.

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexual abuse or exploitation' means conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, abusive sexual contact of a minor, any similar offense under state law, or an attempt or conspiracy to commit any of the above offenses.

'Sexual abuse or exploitation' does not include trafficking in material relating to the sexual abuse or exploitation of a minor.

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. § 2256."

The Commentary to § 2G2.4 is amended by adding at the end the following:

"Application Notes:

1. For purposes of this guideline—

'Minor' means an individual who had not attained the age of 18 years.

'Visual depiction' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

2. For purposes of subsection (b)(2), a file that (A) contains a visual depiction; and (B) is stored on a magnetic, optical, digital, other electronic, or other storage medium or device, shall be considered to be one item.

If the offense involved a large number of visual depictions, an upward departure may be warranted, regardless of whether subsection (b)(2) applies."

Section 2G3.1 is amended in the title by adding at the end "; Transferring Obscene Matter to a Minor".

Section 2G3.1(b) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) (Apply the Greatest) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(E) Distribution other than distribution described in subdivisions (A) through (D), increase by 2 levels."

The Commentary to § 2G3.1 captioned "Statutory Provisions" is amended by inserting "1470" after "1466".

The Commentary to § 2G3.1 captioned "Application Note" is amended by striking Note 1 in its entirety and inserting the following:

"1. For purposes of this guideline—

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of obscene matter.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who had not attained the age of 16 years.

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse)."

The Commentary to § 2G3.2 captioned "Background" is amended by inserting "Transferring Obscene Matter to a Minor" after "Transporting Obscene Matter".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 1468" the following new line:

"18 U.S.C. 1470 2G3.1"

and by inserting after the line referenced to "18 U.S.C. § 2423(b)" the following new line:

"18 U.S.C. 2425 2G1.1".

Reason for Amendment: This is a six-part amendment. The amendment is promulgated primarily in response to the Protection of Children from Sexual Predators Act of 1998, Pub. L. 105-314 (the "Act"), which contained several directives to the Commission.

First, the amendment addresses the Act's directives to provide enhancements to the guidelines covering aggravated sexual abuse, sexual abuse, and sexual abuse of a minor if (1) the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a minor to engage in any prohibited sexual activity; and (2) the defendant knowingly misrepresented the defendant's actual identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a minor to engage in any prohibited sexual conduct. The legislative history of the Act indicates congressional intent to ensure that persons who misrepresent themselves to a minor, or use computers or Internet-access devices to locate and gain access to a minor, are severely punished.

In response to these directives, the amendment provides separate, cumulative two-level enhancements in the sexual abuse guidelines, §§ 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), 2A3.3 (Criminal Sexual Abuse of a Ward), and 2A3.4 (Abusive Sexual Contact), and in § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct) for (1) the use of a computer or Internet-access device with the intent to persuade, induce, entice, coerce, or facilitate the transport of a minor to engage in any prohibited sexual conduct; and (2) misrepresentation of a criminally responsible person's identity with such an intent. The Commission has determined that, for offenses sentenced under these guidelines, the use of a computer or Internet-access device and the misrepresentation of identity represent separate, additional harms and increase the culpability of a defendant or criminal participant who engages, or attempts to engage, in such conduct. With respect to §§ 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material), the amendment treats these two types of aggravating conduct as alternative triggers for one enhancement. In these guidelines, the substantially higher base offense levels and other specific offense characteristics provide alternative guideline mechanisms to account, at least in part, for these harms and the defendant's increased culpability. Accordingly, the Commission determined that, in these guidelines, a single, two-level increase for the use of a computer or

misrepresentation adequately addresses the increased seriousness of these offenses.

Second, this amendment responds to the directive in the Act to provide a sentencing enhancement for offenses under chapter 117 of title 18, United States Code (relating to the transportation of minors for illegal sexual activity), while ensuring that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines. In furtherance of this directive, the Commission initiated a comprehensive examination of §§ 2A3.2 and 2G1.1, the guidelines under which most cases prosecuted under such chapter are sentenced. The Commission intends to continue its comprehensive review of these guidelines and other guidelines that cover chapter 117 offenses in the next amendment cycle.

The amendment implements the directive to provide an enhancement for chapter 117 offenses, in part, through the enhancements provided in §§ 2A3.2 and 2G1.1 for misrepresentation of identity and use of a computer to facilitate such offenses. In addition, the amendment provides an alternative basis for a sentencing enhancement if a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct. Despite the fact that § 2A3.2 nominally applies to consensual sexual acts with a person who had not attained the age of 16 years, Commission data indicated that many of the cases sentenced under § 2A3.2, directly or via a cross reference from § 2G1.1, involve some aspect of undue influence over the victim on the part of the defendant or other criminally responsible person. Analysis of these cases revealed conduct such as coercion, enticement, or other forms of undue influence by the defendant that compromised the voluntariness of the victim's behavior and, accordingly, increased the defendant's culpability for the crime. This prong of the new enhancement is designed to allow courts to consider closely the facts of the individual case. Furthermore, a rebuttable presumption is created that the offense involved undue influence if a participant was at least 10 years older than the victim. Data reviewed by the Commission suggested that such a presumption is appropriate because persons who are much older than a minor are frequently in a position to manipulate the minor due to increased knowledge, influence, and resources.

As a result of the Commission's comprehensive assessment of §§ 2A3.2 and 2G1.1, the amendment also makes several other modifications to these guidelines. The amendment provides, in § 2A3.2, an alternative base offense level of level 18 if the offense involved a violation of chapter 117 of title 18, United States Code. This alternative base offense level more fully implements a directive in the Sex Crimes Against Children Prevention Act of 1995, Pub. L. 104-71, to provide at least a three-level increase for offenses under 18 U.S.C. § 2423(a) involving the transportation of minors for prostitution or other prohibited sexual conduct. However, the amendment also provides for a three-level decrease if a defendant receives the higher alternative base offense level of level 18 and none of certain listed aggravating specific offense characteristics apply. This reduction recognizes that not all defendants convicted under chapter 117 have necessarily engaged in a more aggravated form of statutory rape conduct. The amendment also adds several definitions to § 2A3.2, including clarifying that "victim" includes an undercover police officer who represents to the perpetrator of the offense that the officer was under the age of 16 years. This change was made to ensure that offenders who are apprehended in an undercover operation are appropriately punished. In § 2G1.1, the amendment reallocates, without substantive change, five offense levels from subsection (b)(2) to the base offense level, for offenses involving a minor. Section 2G1.1(b)(1) also is amended to clarify that the offense must have involved prostitution in order for the enhancement for coercion, threats, or drugs to apply. The amendment also clarifies that, in §§ 2A3.2(c)(1) and 2G1.1(c)(2), the cross reference to § 2A3.1 shall apply if the offense involved criminal sexual abuse of a minor under the age of 12 years, regardless of the "consent" of the victim. Review of Commission data indicated that the cross reference to § 2A3.1 currently is not being applied in many cases in which the offense conduct suggests it should. In both §§ 2A3.2 and 2G1.1, the amendment also precludes application of the new enhancement for misrepresentation of identity and/or undue influence if the victim is in the custody, care, or supervisory control of the defendant.

Third, the amendment addresses the directive in the Act to clarify that the term "distribution of pornography" applies to the distribution of pornography for both monetary

remuneration and a non-pecuniary interest. In response to the directive, the amendment modifies the enhancement in § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor), relating to the distribution of child pornographic material, as well as a similar enhancement in § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor), relating to the distribution of obscene material. For each of these enhancements, the amendment (1) modifies the definition of "distribution" to mean any act, including production, transportation, and possession with intent to distribute, related to the transfer of the material, regardless of whether it was for pecuniary gain; and (2) provides for varying levels of enhancement depending upon the purpose and audience of the distribution. These varying levels are intended to respond to increased congressional concerns, as indicated in the legislative history of the Act, that pedophiles, including those who use the Internet, are using child pornographic and obscene material to desensitize children to sexual activity, to convince children that sexual activity involving children is normal, and to entice children to engage in sexual activity.

Fourth, the amendment clarifies the meaning of the term "item" in subsection (b)(2) of § 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct). That subsection provides a two-level enhancement if the offense involved possession of ten or more items of child pornography. The amendment adopts the holding of all circuits that have addressed the matter that a computer file qualifies as an item for purposes of the enhancement. The amendment also provides for an invited upward departure if the offense involves a large number of visual depictions of child pornography, regardless of the number of "items" involved. This provision invites courts to depart upward in cases in which a particular item, such as a book or a computer file, contains an unusually large number of pornographic images involving children.

Fifth, the amendment addresses the new offense of transferring obscene matter to a minor, codified at 18 U.S.C. 1470, by referencing the offense in the Statutory Index (Appendix A) to § 2G3.1.

Sixth, the amendment addresses the new offense of prohibiting the knowing transmittal of identifying information about minors for criminal sexual purposes, codified at 18 U.S.C. 2425, by

referencing the new offense in the Statutory Index to § 2G1.1.

Because of the limited time available in this amendment cycle, the Commission was not able fully to respond to all of the directives of the Act. In the next amendment cycle, the Commission intends to continue consideration of the directive requiring that the Commission "provide for an appropriate enhancement in any case in which the defendant engaged in a pattern of activity of sexual abuse and exploitation of a minor." In addition, the Commission intends to consider further the general directive in the Act requiring the Commission to ensure "that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines." Implementation of this directive may include, for example, an examination of the appropriate offense level for defendants convicted of sexual abuse offenses that are not committed in violation of chapter 117 of title 18, United States Code (e.g., offenses committed on Native American lands).

3. *Amendment*: Section 2B5.3, effective May 1, 2000 (see *USSC Guidelines Manual Supplement to 1998 Supplement to Appendix C, Amendment 590*), is repromulgated, with minor editorial changes, as follows:

"§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: 8.

(b) Specific Offense Characteristics:

(1) If the infringement amount exceeded \$2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

(2) If the offense involved the manufacture, importation, or uploading of infringing items, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(3) If the offense was not committed for commercial advantage or private financial gain, decrease by 2 levels, but the resulting offense level shall be not less than level 8.

(4) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

Commentary

*Statutory Provisions*: 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For

additional statutory provision(s), see Appendix A (Statutory Index).

*Application Notes*:

1. Definitions.—For purposes of this guideline:

'Commercial advantage or private financial gain' means the receipt, or expectation of receipt, of anything of value, including other protected works.

'Infringed item' means the copyrighted or trademarked item with respect to which the crime against intellectual property was committed.

'Infringing item' means the item that violates the copyright or trademark laws.

'Uploading' means making an infringing item available on the Internet or a similar electronic bulletin board with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item.

2. Determination of Infringement Amount.—This note applies to the determination of the infringement amount for purposes of subsection (b)(1).

(A) Use of Retail Value of Infringed Item.—The infringement amount is the retail value of the infringed item, multiplied by the number of infringing items, in a case involving any of the following:

(i) The infringing item (I) is, or appears to a reasonably informed purchaser to be, identical or substantially equivalent to the infringed item; or (II) is a digital or electronic reproduction of the infringed item.

(ii) The retail price of the infringing item is not less than 75% of the retail price of the infringed item.

(iii) The retail value of the infringing item is difficult or impossible to determine without unduly complicating or prolonging the sentencing proceeding.

(iv) The offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. 2511. (In a case involving such an offense, the 'retail value of the infringed item' is the price the user of the transmission would have paid to lawfully receive that transmission, and the 'infringed item' is the satellite transmission rather than the intercepting device.)

(v) The retail value of the infringed item provides a more accurate assessment of the pecuniary harm to the copyright or trademark owner than does the retail value of the infringing item.

(B) Use of Retail Value of Infringing Item.—The infringement amount is the retail value of the infringing item, multiplied by the number of infringing items, in any case not covered by subdivision (A) of this Application

Note, including a case involving the unlawful recording of a musical performance in violation of 18 U.S.C. 2319A.

(C) Retail Value Defined.—For purposes of this Application Note, the 'retail value' of an infringed item or an infringing item is the retail price of that item in the market in which it is sold.

(D) Determination of Infringement Amount in Cases Involving a Variety of Infringing Items.—In a case involving a variety of infringing items, the infringement amount is the sum of all calculations made for those items under subdivisions (A) and (B) of this Application Note. For example, if the defendant sold both counterfeit videotapes that are identical in quality to the infringed videotapes and obviously inferior counterfeit handbags, the infringement amount, for purposes of subsection (b)(1), is the sum of the infringement amount calculated with respect to the counterfeit videotapes under subdivision (A)(i) (i.e., the quantity of the infringing videotapes multiplied by the retail value of the infringed videotapes) and the infringement amount calculated with respect to the counterfeit handbags under subdivision (B) (i.e., the quantity of the infringing handbags multiplied by the retail value of the infringing handbags).

3. Uploading.—With respect to uploading, subsection (b)(2) applies only to uploading with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item. For example, this subsection applies in the case of illegally uploading copyrighted software to an Internet site, but it does not apply in the case of downloading or installing that software on a hard drive on the defendant's personal computer.

4. Application of § 3B1.3.—If the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item, an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) shall apply.

5. Upward Departure Considerations.—If the offense level determined under this guideline substantially understates the seriousness of the offense, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure may be warranted:

(A) The offense involved substantial harm to the reputation of the copyright or trademark owner.

(B) The offense was committed in connection with, or in furtherance of,

the criminal activities of a national, or international, organized criminal enterprise.

*Background:* This guideline treats copyright and trademark violations much like theft and fraud. Similar to the sentences for theft and fraud offenses, the sentences for defendants convicted of intellectual property offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, similar to the loss enhancement in the theft and fraud guidelines, the infringement amount in subsection (b)(1) serves as a principal factor in determining the offense level for intellectual property offenses.

Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act of 1997, Pub. L. 105-147, by using the retail value of the infringed item, multiplied by the number of infringing items, to determine the pecuniary harm for cases in which use of the retail value of the infringed item is a reasonable estimate of that harm. For cases referred to in Application Note 2(B), the Commission determined that use of the retail value of the infringed item would overstate the pecuniary harm or otherwise be inappropriate. In these types of cases, use of the retail value of the infringing item, multiplied by the number of those items, is a more reasonable estimate of the resulting pecuniary harm.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline."

*Reason for Amendment:* This amendment is in response to section 2(g) of the No Electronic Theft (NET) Act of 1997, Pub. L. 105-147 ("the Act"). The Act directs the Commission to ensure that the applicable guideline range for intellectual property offenses (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is "sufficiently stringent to deter such a crime." It also more specifically requires that the guidelines "provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed."

The amendment responds to the directives by making changes to the monetary calculation found in § 2B5.3 (Criminal Infringement of Copyright or Trademark). In addition, the amendment makes a number of other

modifications to the infringement guideline, including the addition of several mitigating and aggravating factors, as further means of providing just and proportionate punishment while also seeking to achieve sufficient deterrence.

The monetary calculation in § 2B5.3(b)(1), similar to the loss enhancement in the theft and fraud guidelines, serves as an approximation of the pecuniary harm caused by the offense and is a principal factor in determining the offense level for intellectual property offenses. Prior to this amendment, the monetary calculation for all intellectual property crimes was based on the retail value of the infringing item multiplied by the quantity of infringing items. In response to the directive, the Commission refashioned this enhancement so as to use the retail value of the infringed item, multiplied by the number of infringing items, as a means of approximating the pecuniary harm for cases in which that calculation is believed most likely to provide a reasonable estimate of the resulting harm. Use of that calculation is believed to provide a reasonable approximation for those classes of infringement cases in which it is highly likely that the sale of an infringing item results in a displaced sale of the legitimate, infringed item. The amendment also requires that the retail value of the infringed item, multiplied by the number of infringing items, be used in certain other cases for reasons of practicality.

However, based upon a review of cases sentenced under the former § 2B5.3 over two years, the Commission further determined that using the above formula likely would overstate substantially the pecuniary harm caused to copyright and trademark owners in some cases currently sentenced under the guideline. For those cases, a one-to-one correlation between the sale of infringing items and the displaced sale of legitimate, infringed items is unlikely because the inferior quality of the infringing item and/or the greatly discounted price at which it is sold suggests that many purchasers of infringing items would not, or could not, have purchased the infringed item in the absence of the availability of the infringing item. The Commission therefore determined that, for these latter classes of cases (referred to in Application Note 2(B)), the retail value of the infringing item, multiplied by the number of those items, provides a more reasonable approximation of lost revenues to the copyright or trademark

owner, and hence, of the pecuniary harm resulting from the offense.

This amendment also increases the base offense level from level 6 to level 8. The two-level increase in the base offense level brings the infringement guideline more in line with offense levels that would pertain under § 2F1.1 (Fraud and Deceit), assuming applicability under that guideline of the two-level enhancement for more than minimal planning. Based on a review of cases sentenced under the infringement guideline, if a more than minimal planning enhancement did exist in that guideline, it would apply in the vast majority of such cases because they involve this kind of aggravating conduct. Rather than provide a separate enhancement within the revised guideline for "more than minimal planning" conduct, the Commission determined that the infringement guideline should incorporate this type of conduct into the base offense level.

This amendment also provides an enhancement of two levels, and a minimum offense level of level 12, if the offense involved the manufacture, importation, or uploading of infringing items. The Commission determined that defendants who engage in such conduct are more culpable than other intellectual property offenders because they place infringing items into the stream of commerce, thereby enabling others to infringe the copyright or trademark. A review of cases sentenced under the guideline indicated applicability of this enhancement to approximately two-thirds of the cases.

This amendment also provides a two-level downward adjustment (but to a resulting offense level that is not less than offense level 8) if the offense was not committed for commercial advantage or private financial gain. This adjustment reflects the fact that the Act establishes lower statutory penalties for offenses that were not committed for commercial advantage or private financial gain.

This amendment also provides an enhancement of two levels, and a minimum offense level of level 13, if the offense involved the conscious or reckless risk of serious bodily injury or possession of a dangerous weapon in connection with the offense. Testimony received by the Commission indicated that the conscious or reckless risk of serious bodily injury may occur in some cases involving counterfeit consumer products. The Commission determined that this kind of aggravating conduct in connection with infringement cases should be treated under the guidelines in the same way it is treated in connection with fraud cases; therefore,

this enhancement is consistent with an identical provision in the fraud guideline.

The amendment also contains an application note expressly providing that the adjustment in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) shall apply if the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item. As stated in the background commentary to § 3B1.3, persons who use such a special skill to facilitate or commit a crime generally are viewed as more culpable.

Finally, this amendment contains two encouraged upward departure provisions. The Commission received public comment that indicated that infringement may cause substantial harm to the reputation of the copyright or trademark owner that is not accounted for in the monetary calculation. Public comment also indicated that some copyright and trademark offenses are committed in connection with, or in furtherance of, the criminal activities of certain organized crime enterprises. The amendment invites the court to consider an appropriate upward departure if either of these aggravating circumstances are present.

Pursuant to the emergency amendment authority of the Act, this amendment previously was promulgated as a temporary measure effective May 1, 2000. (*See USSC Guidelines Manual Supplement to the 1998 Supplement to Appendix C, Amendment 590*).

4. *Amendment:* Section 2D1.1(c)(1) is amended by striking “3 KG or more” before “of Methamphetamine (actual)” and inserting “1.5 KG or more”; and by striking “3 KG or more” before “of ‘Ice’” and inserting “1.5 KG or more”.

Section 2D1.1(c)(2) is amended by striking “at least 1 KG but less than 3 KG” before “of Methamphetamine (actual)” and inserting “at least 500 G but less than 1.5 KG”; and by striking “at least 1 KG but less than 3 KG” before “of ‘Ice’” and inserting “at least 500 G but less than 1.5 KG”.

Section 2D1.1(c)(3) is amended by striking “at least 300 G but less than 1 KG” before “of Methamphetamine (actual)” and inserting “at least 150 G but less than 500 G”; and by striking “at least 300 G but less than 1 KG” before “of ‘Ice’” and inserting “at least 150 G but less than 500 G”.

Section 2D1.1(c)(4) is amended by striking “at least 100 G but less than 300 G” before “of Methamphetamine (actual)” and inserting “at least 50 G but less than 150 G”; and by striking “at least 100 G but less than 300 G” before

“of ‘Ice’” and inserting “at least 50 G but less than 150 G”.

Section 2D1.1(c)(5) is amended by striking “at least 70 G but less than 100 G” before “of Methamphetamine (actual)” and inserting “at least 35 G but less than 50 G”; and by striking “at least 70 G but less than 100 G” before “of ‘Ice’” and inserting “at least 35 G but less than 50 G”.

Section 2D1.1(c)(6) is amended by striking “at least 40 G but less than 70 G” before “of Methamphetamine (actual)” and inserting “at least 20 G but less than 35 G”; and by striking “at least 40 G but less than 70 G” before “of ‘Ice’” and inserting “at least 20 G but less than 35 G”.

Section 2D1.1(c)(7) is amended by striking “at least 10 G but less than 40 G” before “of Methamphetamine (actual)” and inserting “at least 5 G but less than 20 G”; and by striking “at least 10 G but less than 40 G” before “of ‘Ice’” and inserting “at least 5 G but less than 20 G”.

Section 2D1.1(c)(8) is amended by striking “at least 8 G but less than 10 G” before “of Methamphetamine (actual)” and inserting “at least 4 G but less than 5 G”; and by striking “at least 8 G but less than 10 G” before “of ‘Ice’” and inserting “at least 4 G but less than 5 G”.

Section 2D1.1(c)(9) is amended by striking “at least 6 G but less than 8 G” before “of Methamphetamine (actual)” and inserting “at least 3 G but less than 4 G”; and by striking “at least 6 G but less than 8 G” before “of ‘Ice’” and inserting “at least 3 G but less than 4 G”.

Section 2D1.1(c)(10) is amended by striking “at least 4 G but less than 6 G” before “of Methamphetamine (actual)” and inserting “at least 2 G but less than 3 G”; and by striking “at least 4 G but less than 6 G” before “of ‘Ice’” and inserting “at least 2 G but less than 3 G”.

Section 2D1.1(c)(11) is amended by striking “at least 2 G but less than 4 G” before “of Methamphetamine (actual)” and inserting “at least 1 G but less than 2 G”; and by striking “at least 2 G but less than 4 G” before “of ‘Ice’” and inserting “at least 1 G but less than 2 G”.

Section 2D1.1(c)(12) is amended by striking “at least 1 G but less than 2 G” before “of Methamphetamine (actual)” and inserting “at least 500 MG but less than 1 G”; and by striking “at least 1 G but less than 2 G” before “of ‘Ice’” and inserting “at least 500 MG but less than 1 G”.

Section 2D1.1(c)(13) is amended by striking “at least 500 MG but less than 1 G” before “of Methamphetamine

(actual)” and inserting “at least 250 MG but less than 500 MG”; and by striking “at least 500 MG but less than 1 G” before “of ‘Ice’” and inserting “at least 250 MG but less than 500 MG”.

Section 2D1.1(c)(14) is amended by striking “less than 500 MG” before “of Methamphetamine (actual)” and inserting “less than 250 MG”; and by striking “less than 500 MG” before “of ‘Ice’” and inserting “less than 250 MG”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 10 in the subdivision of the “Drug Equivalency Tables” captioned “Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)” in the line referenced to “Methamphetamine (Actual)” by striking “10 kg” and inserting “20 kg”; and in the line referenced to “Ice” by striking “10 kg” and inserting “20 kg”.

*Reason for Amendment:* This amendment responds to statutory changes to the quantity of methamphetamine substance triggering mandatory minimum penalties, as prescribed in the Methamphetamine Trafficking Penalty Enhancement Act of 1998, Pub. L. 105-277 (the “Act”). This amendment conforms methamphetamine (actual) penalties, as specified in the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking), to the more stringent mandatory minimums established by the Act. In taking this action, the Commission follows the approach set forth in the original guidelines for the other principal controlled substances for which mandatory minimum penalties have been established by Congress. No change was made in the guideline penalties for methamphetamine mixture offenses because those penalties already corresponded to the mandatory minimum penalties as amended by the Act. *See USSC Guidelines Manual Appendix C, Amendment 555, effective November 1, 1997.*

At the same time that it proposed this amendment, the Commission also had invited comment on whether it should increase penalties for offenses relating to Phenylacetone/P2P, when possessed for the purpose of manufacturing methamphetamine, or amend the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical), relating to any chemical referenced in that table that is used to manufacture methamphetamine. However, in light of the Methamphetamine Anti-Proliferation Act of 1999, passed by the Senate Judiciary Committee on August 5, 1999, and similar pending House legislation,

the Commission has decided to defer action on these issues.

5. *Amendment:* Sections 2B5.1, 2F1.1, and 3A1.1, effective November 1, 1998 (see USSC Guidelines Manual Appendix C Supplement, Amendment 587), are repromulgated without change.

*Reason for Amendment:* This amendment implements, in a broader form, the directives to the Commission in section 6 of the Telemarketing Fraud Prevention Act of 1998, Pub. L. 105-184 ("the Act").

The Act directs the Commission to provide for "substantially increased penalties" for telemarketing frauds. It also more specifically requires that the guidelines provide "an additional appropriate sentencing enhancement, if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States," and "an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to (telemarketing fraud victims over age 55), are affected by a fraudulent scheme or schemes."

This amendment responds to the directives by building upon the amendments to the fraud guideline, § 2F1.1 (Fraud and Deceit), that were submitted to Congress on May 1, 1998. (See USSC Guidelines Manual Appendix C Supplement, Amendment 577.) Those amendments added a specific offense characteristic for "mass-marketing," which is defined to include telemarketing, and a specific offense characteristic for sophisticated concealment.

This amendment broadens the "sophisticated concealment" enhancement to cover "sophisticated means" of executing or concealing a fraud offense. In addition, the amendment increases the enhancement under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim), for offenses that impact a large number of vulnerable victims.

This amendment also makes a conforming amendment to § 2B5.1 in the definition of "United States".

In designing enhancements that may apply more broadly than the Act's above-stated directives minimally require, the Commission acts consistently with other directives in the Act (e.g., section 6(c)(4) (requiring the Commission to ensure that its implementing amendments are reasonably consistent with other relevant directives to the Commission and other parts of the sentencing guidelines)) and with its basic mandate in sections 991 and 994 of title 28,

United States Code (e.g., 28 U.S.C. § 991(b)(1)(B)) (requiring sentencing policies that avoid unwarranted disparities among similarly situated defendants)).

Pursuant to the emergency amendment authority of the Act, this amendment previously was promulgated as a temporary measure effective November 1, 1998. (See USSC Guidelines Manual Appendix C Supplement, Amendment 587.)

6. *Amendment:* The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Note 4 in its entirety; by redesignating Notes 5 through 16 as Notes 4 through 15, respectively; and in Note 2 by striking the second paragraph in its entirety and inserting the following:

"If the offense involved making a fraudulent loan or credit card application, or other unlawful conduct involving a loan, a counterfeit access device, or an unauthorized access device, the loss is to be determined in accordance with the Commentary to § 2F1.1 (Fraud and Deceit). For example, in accordance with Application Note 17 of the Commentary to § 2F1.1, in a case involving an unauthorized access device (such as a stolen credit card), loss includes any unauthorized charge(s) made with the access device. In such a case, the loss shall be not less than \$500 per unauthorized access device. For purposes of this application note, 'counterfeit access device' and 'unauthorized access device' have the meaning given those terms in 18 U.S.C. 1029(e)(2) and (e)(3), respectively."

Section 2F1.1, as amended by Amendment 5 of this document, is further amended by redesignating subsections (b)(5) through (b)(7) as subsections (b)(6) through (b)(8), respectively; and by inserting after subsection (b)(4) the following:

"(5) If the offense involved—  
(A) the possession or use of any device-making equipment;  
(B) the production or trafficking of any unauthorized access device or counterfeit access device; or

(C) (i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification; or (ii) the possession of 5 or more means of identification that unlawfully were produced from another means of identification or obtained by the use of another means of identification, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12."

The Commentary to § 2F1.1 captioned "Application Notes", as amended by

Amendment 5 of this document, is further amended in Note 12 in the first sentence by striking "fraudulent identification documents and" by striking the second sentence in its entirety; in the third sentence, by striking "the case of an offense involving false identification documents or access devices," and inserting "such a case," and by adding at the end the following paragraph:

"Offenses involving identification documents, false identification documents, and means of identification, in violation of 18 U.S.C. 1028, also are covered by this guideline. If the primary purpose of the offense was to violate, or assist another to violate, the law pertaining to naturalization, citizenship, or legal resident status, apply § 2L2.1 (Trafficking in a Document Relating to Naturalization) or § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization), as appropriate, rather than § 2F1.1."

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended by redesignating Notes 15 through 20 as Notes 18 through 23, respectively; and by inserting after Note 14 the following:

"15. For purposes of subsection (b)(5)—

'Counterfeit access device' (A) has the meaning given that term in 18 U.S.C. 1029(e)(2); and (B) also includes a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications service. 'Telecommunications service' has the meaning given that term in 18 U.S.C. 1029(e)(9).

'Device-making equipment' (A) has the meaning given that term in 18 U.S.C. 1029(e)(6); and (B) also includes (i) any hardware or software that has been configured as described in 18 U.S.C. 1029(a)(9); and (ii) a scanning receiver referred to in 18 U.S.C. 1029(a)(8). 'Scanning receiver' has the meaning given that term in 18 U.S.C. 1029(e)(8).

'Means of identification' has the meaning given that term in 18 U.S.C. 1028(d)(3), except that such means of identification shall be of an actual (i.e., not fictitious) individual other than the defendant or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct).

'Produce' includes manufacture, design, alter, authenticate, duplicate, or assemble. 'Production' includes manufacture, design, alteration, authentication, duplication, or assembly.

'Unauthorized access device' has the meaning given that term in 18 U.S.C. 1029(e)(3).

16. Subsection (b)(5)(C)(i) applies in a case in which a means of identification of an individual other than the defendant (or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct)) is used without that individual's authorization unlawfully to produce or obtain another means of identification.

Examples of conduct to which this subsection should apply are as follows:

(A) A defendant obtains an individual's name and social security number from a source (e.g., from a piece of mail taken from the individual's mailbox) and obtains a bank loan in that individual's name. In this example, the account number of the bank loan is the other means of identification that has been obtained unlawfully.

(B) A defendant obtains an individual's name and address from a source (e.g., from a driver's license in a stolen wallet) and applies for, obtains, and subsequently uses a credit card in that individual's name. In this example, the credit card is the other means of identification that has been obtained unlawfully.

Examples of conduct to which subsection (b)(5)(C)(i) should not apply are as follows:

(A) A defendant uses a credit card from a stolen wallet only to make a purchase. In such a case, the defendant has not used the stolen credit card to obtain another means of identification.

(B) A defendant forges another individual's signature to cash a stolen check. Forging another individual's signature is not producing another means of identification.

Subsection (b)(5)(C)(ii) applies in any case in which the offense involved the possession of 5 or more means of identification that unlawfully were produced or obtained, regardless of the number of individuals in whose name (or other identifying information) the means of identification were so produced or so obtained.

In a case involving unlawfully produced or unlawfully obtained means of identification, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense. Examples may include the following:

(A) The offense caused substantial harm to the victim's reputation or credit record, or the victim suffered a substantial inconvenience related to repairing the victim's reputation or a damaged credit record.

(B) An individual whose means of identification the defendant used to

obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in the individual's name.

(C) The defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual's identity.

17. In a case involving any counterfeit access device or unauthorized access device, loss includes any unauthorized charges made with the counterfeit access device or unauthorized access device. In any such case, loss shall be not less than \$500 per access device. However, if the unauthorized access device is a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (including an electronic serial number/mobile identification number (ESN/MIN) pair), and that means was only possessed, and not used, during the commission of the offense, loss shall be not less than \$100 per unused means. For purposes of this application note, 'counterfeit access device' and 'unauthorized access device' have the meaning given those terms in Application Note 15."

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended in redesignated Note 18 (formerly Note 15) by striking "(b)(5)" each place it appears and inserting "(b)(6)".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended in redesignated Note 21 (formerly Note 18), by striking "(b)(7)" and inserting "(b)(8)".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended by striking redesignated Note 23 (formerly Note 20), in its entirety and inserting the following:

"23. If subsection (b)(5), subsection (b)(8)(A), or subsection (b)(8)(B) applies, there shall be a rebuttable presumption that the offense also involved more than minimal planning for purposes of subsection (b)(2).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis of an enhancement under subsection (b)(6), do not apply an enhancement under subsection (b)(6)."

The Commentary to § 2F1.1 captioned "Background", as amended by Amendment 5 of this document, is further amended by striking the sixth paragraph and all that follows through

the end of the "Background" and inserting the following:

"Subsections (b)(5)(A) and (B) implement the instruction to the Commission in section 4 of the Wireless Telephone Protection Act, Public Law 105-172.

Subsection (b)(5)(C) implements the directive to the Commission in section 4 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105-318. This subsection focuses principally on an aggravated form of identity theft known as 'affirmative identity theft' or 'breeding,' in which a defendant uses another individual's name, social security number, or some other form of identification (the 'means of identification') to 'breed' (i.e., produce or obtain) new or additional forms of identification. Because 18 U.S.C. 1028(d) broadly defines 'means of identification,' the new or additional forms of identification can include items such as a driver's license, a credit card, or a bank loan. This subsection provides a minimum offense level of level 12, in part, because of the seriousness of the offense. The minimum offense level accounts for the fact that the means of identification that were 'bred' (i.e., produced or obtained) often are within the defendant's exclusive control, making it difficult for the individual victim to detect that the victim's identity has been 'stolen.' Generally, the victim does not become aware of the offense until certain harms have already occurred (e.g., a damaged credit rating or inability to obtain a loan). The minimum offense level also accounts for the non-monetary harm associated with these types of offenses, much of which may be difficult or impossible to quantify (e.g., harm to the individual's reputation or credit rating, inconvenience, and other difficulties resulting from the offense). The legislative history of the Identity Theft and Assumption Deterrence Act of 1998 indicates that Congress was especially concerned with providing increased punishment for this type of harm.

Subsection (b)(6) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105-184.

Subsection (b)(7)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103-322.

Subsection (b)(8)(A) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101-73.

Subsection (b)(8)(B) implements the instruction to the Commission in section 2507 of Public Law 101-647.

Subsection (c) implements the instruction to the Commission in section 805(c) of Public Law 104-132.”.

*Reason for Amendment:* This is a five-part amendment. First, this amendment provides a two-level increase and a minimum offense level of level 12 for offenses involving (1) the possession or use of equipment that is used to manufacture access devices; (2) the production of, or trafficking in, unauthorized and counterfeit access devices, such as stolen credit cards and cloned wireless telephones; or (3) affirmative identity theft (*i.e.*, unlawfully producing from any means of identification any other means of identification). Affirmative identity theft, referred to in the research and analysis conducted by the Commission as the “breeding” of identification means, will result in an enhanced penalty in any case in which there is a transfer or use of another person’s means of identification unlawfully to produce or “breed” additional means of identification, or in which there is the possession of five or more means of identification that were unlawfully produced.

Second, this amendment provides a rebuttable presumption that the offense involved more than minimal planning, and it contains a rule to avoid “double counting” between the existing enhancement for “sophisticated means” based on the same conduct.

Third, the amendment provides a revised minimum loss rule for offenses involving counterfeit or unauthorized access devices. Specifically, this rule requires that a minimum loss amount of \$500 per access device be used when calculating the loss involved in the offense. However, for offenses that involve only the possession, and not the use, of a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (*e.g.*, an ESN/MIN pair used to obtain telecommunications service in a wireless telephone), the rule provides a minimum loss amount of \$100 per unused means.

Fourth, this amendment provides an encouraged upward departure if the offense level does not adequately reflect the seriousness of the offense conduct. Examples of cases in which a departure may be warranted include those in which (1) an identity theft caused substantial harm to the victim’s reputation or credit record; (2) an individual is arrested, or is denied a job, because of a misidentification that results from an identity theft; or (3) a defendant essentially assumed the victim’s identity.

Fifth, this amendment incorporates the statutory definitions of 18 U.S.C. 1028 and 1029, although it also broadens the definitions of “counterfeit access device” and “device-making equipment” for guideline purposes.

This amendment responds to the directives to the Commission contained in section 4 of the Identity Theft and Assumption Deterrence Act of 1998, Pub. L. 105-318(b)(1) (“ITADA”) and section 2 of the Wireless Telephone Protection Act, Pub. L. 105-172 (“WTPA”). For the reasons discussed below and because of the overlap in some of the statutory definitions in the ITADA and the WTPA (particularly “access device,” “telecommunication identifying information,” and “means of identification”), enhancements have been consolidated into a single guideline amendment.

The ITADA and the WTPA directed the Commission to “review and amend the Federal sentencing guidelines and the policy statements of the Commission” to provide appropriate punishment for identity theft offenses under 18 U.S.C. 1028 and for offenses under 18 U.S.C. 1029 related to the cloning of wireless telephones.

The WTPA directed the Commission to review, among other factors, “the range of conduct covered by” cloning offenses. Although cloned telephones may be possessed and used in connection with a variety of offenses, the Commission determined that the possession or use of a cloned phone does not necessarily increase the seriousness of the underlying offense. However, the Commission decided that offenders who manufacture or distribute cloned telephones are more culpable than offenders who only possess them. Accordingly, the new enhancements at § 2F1.1(b)(5)(A) and (B) recognize that such offenders warrant greater punishment. However, to ensure that the guidelines apply consistently to similarly serious conduct regardless of the technology employed, this amendment provides for a broader enhancement that applies to the manufacture or distribution of any access device, including a cloned telephone.

The ITADA directed the Commission to assess certain specific factors in its consideration of appropriate penalties for identity theft, including: the number of victims; the harm to a victim’s reputation and inconvenience caused by the offense; the number of means of identification, identification documents, or false identification documents involved in the offense; the range of offense conduct; and, the adequacy of

the value of loss to an individual victim as a measure for establishing penalties.

In conducting research pursuant to the ITADA, the Commission learned that identity theft, as defined broadly under the new statutory provisions at 18 U.S.C. 1028(a)(7) and 1028(d)(3), occurs along a continuum of offense conduct. The most basic type of identity theft occurs when a thief steals a wallet and uses a stolen credit card to make a purchase or forges a signature to cash a stolen check. However, after analyzing the legislative history of the ITADA and Commission data, the Commission determined that the more aggravated and sophisticated forms of identity theft, about which Congress seemed particularly concerned, should be the focus of enhanced punishment under the guidelines. Such offense conduct, which generally occurs within the context of financial and credit account take-overs, involves affirmative activity to generate or “breed” another level of identification means without the knowledge of the individual victim whose identification means are misused, purloined, or “taken over”. This activity is considered more sophisticated because of the additional steps the perpetrator takes to “breed” additional means of identification in order to conceal and continue the fraudulent conduct. Such sophisticated conduct makes detection by both the individual and institutional victims much more difficult. It also has the potential to increase harm, both monetary and non-monetary, to the individual victims (about whom Congress was particularly concerned in enacting the ITADA), and can result in substantial disruption of record-keeping by governmental agencies and private financial institutions upon which the stream of commerce depends. Thus, the Commission determined that this aggravated offense conduct, in contrast to the most basic forms of identity theft, merits enhanced punishment.

Accordingly, amended section § 2F1.1(b)(5)(C) recognizes that the conduct of generating or “breeding” identification means warrants substantial additional penalties. The minimum offense level of level 12 accounts for the fact that the defendant in an identity theft case typically has exclusive control over the “bred” means of identification, making it difficult for the individual victim to detect that the victim’s identity has been stolen until substantial harms (*e.g.*, a damaged credit rating) have occurred. The minimum offense level also accounts for the non-monetary harms associated with identity theft (*e.g.*, harm to reputation or credit rating), which typically are

difficult to quantify. However, for cases in which the nature and scope of the harm to an individual victim is so egregious that the two-level enhancement and minimum offense level provide insufficient punishment, the amendment invites an upward departure.

The WTPA directed the Commission to review “the extent to which the value of the loss caused by the offenses \* \* \* is an adequate measure for establishing penalties. \* \* \*” The amendment provides a minimum loss rule in § 2F1.1 that extends to all access devices, not just to cloned wireless telephones. In so doing, similar fraud cases will be treated similarly regardless of the technology or type of access device used in the offense. Additionally, the Commission’s research and data supported increasing the minimum loss amount, previously provided only in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), from \$100 to \$500 per access device. However, the data were insufficient to support using this increased amount in cases that involve only the possession, and not the use, of means of telecommunications access that identify a specific telecommunications instrument or account (e.g., ESN/MIN pairs of wireless telephones). (An example of such a case is a defendant who possesses a list of ESN/MIN pairs but has not used any of those pairs to clone wireless telephones.) For such cases, the Commission decided that the minimum loss amount should be \$100 per unused means.

7. *Amendment:* Section 2F1.1(b), as amended by Amendment 5 of this document, is further amended in subdivision (4) by striking “; or” after “agency” and inserting a semicolon; by inserting “a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; or (C) a” after “(B)”; and by inserting “prior, specific” before “judicial”.

The Commentary to § 2F1.1 captioned “Application Notes”, as amended by Amendment 5 of this document, is further amended by striking Note 6 in its entirety and inserting the following:

“6. Subsection (b)(4)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is established that an entity the defendant

controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (e.g., a violation of a condition of release addressed in § 2J1.7 (Commission of Offense While on Release) or a violation of probation addressed in § 4A1.1 (Criminal History Category)).

If the conduct that forms the basis for an enhancement under (b)(4)(B) or (C) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.”

The Commentary to § 2F1.1 captioned “Background”, as amended by Amendment 5 of this document, is further amended by striking the fourth sentence of the fourth paragraph and inserting the following:

“The commission of a fraud in the course of a bankruptcy proceeding subjects the defendant to an enhanced sentence because that fraudulent conduct undermines the bankruptcy process as well as harms others with an interest in the bankruptcy estate.”

*Reason for Amendment:* The amendment was prompted by the circuit conflict regarding whether the enhancement in § 2F1.1 (Fraud and Deceit) for “violation of any judicial or administrative order, injunction, decree, or process” applies to false statements made during bankruptcy proceedings. Compare *United States v. Saacks*, 131 F.3d 540 (5th Cir. 1997) (bankruptcy fraud implicates the violation of a judicial or administrative order or process within the meaning of the enhancement; *United States v. Michalek*, 54 F.3d 325 (7th Cir. 1995) (bankruptcy fraud is a “special procedure”; it is a violation of a specific adjudicatory process); *United States v. Lloyd*, 947 F.2d 339 (8th Cir. 1991) (knowing concealment of assets in bankruptcy fraud violates “judicial process”); *United States v. Welch*, 103 F.3d 906 (9th Cir. 1996) (same); *United States v. Messner*, 107 F.3d 1448 (10th Cir. 1997) (same); *United States v. Bellew*, 35 F.3d 518 (11th Cir. 1994) (knowing concealment of assets during bankruptcy proceedings qualifies as a

violation of a “judicial order”), with *United States v. Shaddock*, 112 F.3d 523 (1st Cir. 1997) (falsely filling out bankruptcy forms does not violate judicial process since the debtor is not accorded a position of trust). See also *United States v. Carozzella*, 105 F.3d 796 (2d Cir. 1997) (district court erred in enhancing the sentence for violation of judicial process in the case of a defendant who filed false accounts in probate court).

The majority of circuits have held that the current enhancement applies to a defendant who conceals assets in a bankruptcy case because the conduct violates a judicial order or violates judicial process. Commission data indicate that, in fiscal year 1998, 41 defendants received an increase for either “violation of a judicial order \* \* \* or misrepresentation of a charitable organization.” The data did not distinguish between the two parts of the enhancement.

This amendment creates a separate and distinct basis for a two-level enhancement under the fraud guideline for a misrepresentation or false statement made in the course of a bankruptcy proceeding. Additionally, the existing enhancement and its accompanying commentary are modified to make clear that, in order for the enhancement to apply in a fraud case not involving a bankruptcy proceeding, there must be a false statement in violation of a specific, prior order. Therefore, any case involving a bankruptcy fraud will result in a two-level enhancement, but in the case of a non-bankruptcy fraud, the enhancement will apply only if a defendant was given prior notice of a particular action. The Commission has decided to treat bankruptcy fraud more severely because of its adverse impact on the bankruptcy judicial process and because of the additional harm and seriousness involved in such conduct. See *United States v. Saacks*, 131 F.3d 540, 543 (5th Cir. 1997) (noting that bankruptcy fraud is more serious than “the most pedestrian federal fraud offense”).

8. *Amendment:* Section 2K2.4 is amended by striking subsection (a) in its entirety and inserting the following:

“(a) If the defendant, whether or not convicted of another crime, was convicted of violating:

(1) Section 844(h) of title 18, United States Code, the guideline sentence is the term of imprisonment required by statute.

(2) Section 924(c) or section 929(a) of title 18, United States Code, the guideline sentence is the minimum term of imprisonment required by statute.”

The Commentary to § 2K2.4 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. Section 844(h) of title 18, United States Code, provides a mandatory term of imprisonment of 10 years (or 20 years for the second or subsequent offense). Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.*, not less than five years). Subsection (a) reflects this distinction. Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. 844(h) is the term required by the statute, and the guideline sentence for a defendant convicted under 18 U.S.C. 924(c) or 929(a) is the minimum term required by the relevant statute. Each of 18 U.S.C. 844(h), 924(c), and 929(a) requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

A sentence above the minimum term required by 18 U.S.C. 924(c) or 929(a) is an upward departure from the guideline sentence. A departure may be warranted, for example, to reflect the seriousness of the defendant's criminal history, particularly in a case in which the defendant is convicted of an 18 U.S.C. 924(c) or 929(a) offense and has at least two prior felony convictions for a crime of violence or a controlled substance offense that would have resulted in application of § 4B1.1 (Career Offender) if that guideline applied to these offenses. *See* Application Note 3."

The Commentary to § 2K2.4 captioned "Background" is amended by striking the first sentence in its entirety and inserting the following:

"Section 844(h) of title 18, United States Code, provides a mandatory term of imprisonment. Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment. A sentence imposed pursuant to any of these statutes must be imposed to run consecutively to any other term of imprisonment."

The Commentary to § 3D1.1 captioned "Application Note" is amended in Note 1 in the second sentence by striking "mandatory term of five years" and inserting "mandatory minimum terms of imprisonment, based on the conduct involved,"; and in the seventh sentence by inserting "minimum" after "mandatory".

The Commentary to § 5G1.2 is amended in the second sentence of the last paragraph by striking "mandatory term of five years" and inserting "mandatory minimum terms of imprisonment, based on the conduct involved,".

*Reason for Amendment:* This amendment revises § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) to (1) clarify how the minimum, consecutive terms of imprisonment mandated by the statutes indexed to this guideline should be treated for purposes of guideline application; and (2) specify guideline sentences, for all statutes indexed to § 2K2.4, that comply with the Commission's mandate in 28 U.S.C. 994(b)(2) (requiring guideline sentencing ranges in which the maximum shall not exceed the minimum by more than the greater of 25 percent or six months). The Act to Throttle the Criminal Use of Guns, Pub. L. 105-386, changed the penalty provisions in 18 U.S.C. 924(c) from fixed terms of years to ranges of "not less than" various terms of years. This effectively establishes mandatory minimum terms of imprisonment with implicit maximum terms of life. Section 929(a) of title 18, United States Code, contains similar provisions. Section 2K2.4 continues to provide that, in both cases, the term of imprisonment imposed under the statute should be determined independently of the usual guideline application rules and the sentence imposed should run consecutively to any other term of imprisonment. *See* § 5G1.2(a). However, § 2K2.4 previously stated that the term of imprisonment was that "required by statute." Because two of the statutes indexed to the guideline now provide for terms of a range of years, questions arose as to whether any sentence within the statutorily authorized range complied with the guidelines.

The amendment clarifies that the guideline sentence is the minimum term required by the statute of conviction, that a term greater than this minimum is an upward departure and should be imposed using the normal standards and procedures that apply to departures from the guideline range, and that such upward departures are invited under certain circumstances. *See* 18 U.S.C. 3553(b). For example, career offenders who are convicted both of an offense under 18 U.S.C. 924(c) and of an underlying crime of violence or drug trafficking typically will receive lengthy guideline sentences. This amendment modifies Application Note 1 of § 2K2.4 to encourage an upward departure in the unusual circumstance in which an offender is convicted only of 18 U.S.C. 924(c) and would have qualified as a career offender if that guideline applied to such convictions, or in other unusual circumstances in which the sentence in

a particular case does not adequately reflect the seriousness of the defendant's criminal history. Because 18 U.S.C. 844(h) still provides for fixed terms of imprisonment, the amendment differentiates it from the two statutes that provide for terms of a range of years.

The amendment also contains technical and conforming changes: §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2 (Sentencing on Multiple Counts of Conviction) are revised to reflect a change to the penalty provision of 18 U.S.C. 924(c).

9. *Amendment:* The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 2 by striking the first paragraph in its entirety and inserting the following:

"If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. 924(c) conviction.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under § 2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or § 2K2.1(b)(5) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct

covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. 844(h), 924(c) or 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. 922(g), the enhancement under § 2K2.1(b)(5) would not apply.”

The Commentary to § 2K2.4 captioned “Application Notes”, as amended by Amendment 10 of this document, is further amended in Note 5 (formerly Note 4) in the third sentence by inserting “brandishing,” after “possession.”

The Commentary to § 2K2.4 captioned “Background” is amended in the second sentence by inserting “brandishing,” after “use.”

*Reason for Amendment:* This amendment expands the commentary in Application Note 2 of § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) to clarify under what circumstances defendants sentenced for violations of 18 U.S.C. 924(c) in conjunction with convictions for other offenses may receive weapon enhancements contained in the guidelines for those other offenses. The amendment directs that no guideline weapon enhancement should be applied when determining the sentence for the crime of violence or drug trafficking offense underlying the 18 U.S.C. 924(c) conviction, nor for any conduct with respect to that offense for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Guideline weapon enhancements may be applied, however, when determining the sentence for counts of conviction outside the scope of relevant conduct for the underlying offense (e.g., a conviction for a second armed bank robbery for which no 18 U.S.C. 924(c) conviction was obtained).

For similar reasons, this amendment also expands the application note to clarify that offenders who receive a sentence under § 2K2.4 should not receive enhancements under § 2K1.3(b)(3) (pertaining to explosive material connected with another offense), or § 2K2.1(b)(5) (pertaining to firearms or ammunition possessed, used, or transferred in connection with another offense) with respect to any weapon, ammunition, or explosive connected to the offense underlying the count of conviction sentenced under § 2K2.4.

The purposes of this amendment are to (1) avoid unwarranted disparity and duplicative punishment; and (2)

conform application of guideline weapon enhancements with general guideline principles. The relevant application note to § 2K2.4 previously stated that if a sentence was imposed under § 2K2.4 in conjunction with a sentence for “an underlying offense,” no weapon enhancement should be applied with respect to the guideline for the underlying offense. Some courts interpreted “underlying offense” narrowly to mean only the “crime of violence” or “drug trafficking offense” that forms the basis for the 18 U.S.C. § 924(c) conviction. *See, e.g., United States v. Flennory*, 145 F.3d 1264, 1268–69 (11th Cir. 1998), *cert. denied*, 119 S.Ct. 1130 (1999). *But see United States v. Smith*, 196 F.3d 676, 679–82 (6th Cir. 1999) (a conviction under 18 U.S.C. 922(g) qualifies as an “underlying offense,” and thus, application of the enhancement in § 2K2.1(b)(5) was impermissible double-counting). In other cases, offenders have received both the mandated statutory penalty and a guideline weapon enhancement in circumstances in which the guidelines generally would require a single weapon enhancement. *See United States v. Gonzalez*, 183 F.3d 1315, 1325–26 (11th Cir.), *cert. denied*, 120 S.Ct. 996 (2000) (both statutory and guideline increases may be imposed if defendant and accomplice used different weapons as part of a joint undertaking); *United States v. Willett*, 90 F.3d 404, 407–08 (9th Cir. 1996) (not double counting to apply both increases for separate weapons possessed by defendant). *But see United States v. Knobloch*, 131 F.3d 366, 372 (3d Cir. 1996) (error to apply guideline enhancement in addition to statutory penalty “even if the section 924(c)(1) sentence is for a different weapon than the weapon upon which the enhancement is predicated.”)

The amendment clarifies application of the commentary, consistent with the definition of “offense” found in § 1B1.1 (Application Note 1(l)) and with general guideline principles. It addresses disparate application arising from conflicting interpretations of the current guideline in different courts, and is intended to avoid the duplicative punishment that results when sentences are increased under both the statutes and the guidelines for substantially the same harm.

Finally, Application Notes 2 and 4 and the Background Commentary of § 2K2.4 are revised to reflect changes to 18 U.S.C. 924(c), made by the Act to Throttle the Criminal Use of Guns, Pub. L. 105–386, with respect to “brandishing” a firearm.

10. *Amendment:* The Commentary to § 2K2.4 captioned “Application Notes”

is amended by redesignating Notes 3 and 4 as Notes 4 and 5, respectively; and by inserting after Note 2 the following:

“3. Do not apply Chapter Three (Adjustments) and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of these chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2 (Sentencing on Multiple Counts of Conviction).”

The Commentary to § 4B1.2 captioned “Application Notes” is amended in Note 1 by striking “Possessing a firearm during and in relation to a crime of violence” and all that follows through the end of the first sentence and inserting the following:

“A prior conviction for violating 18 U.S.C. 924(c) or 929(a) is a ‘prior felony conviction’ for purposes of applying § 4B1.1 (Career Offender) if the prior offense of conviction established that the underlying offense was a ‘crime of violence’ or ‘controlled substance offense.’”

The Commentary to § 4B1.2 captioned “Application Notes” is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively; and by inserting after Note 1 the following:

“2. The guideline sentence for a conviction under 18 U.S.C. 924(c) or 929(a) is determined only by the statute and is imposed independently of any other sentence. *See* §§ 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes), 3D1.1 (Procedure for Determining Offense Level on Multiple Counts), and subsection (a) of § 5G1.2 (Sentencing on Multiple Counts of Conviction). Accordingly, do not apply this guideline if the only offense of conviction is for violating 18 U.S.C. 924(c) or 929(a). For provisions pertaining to an upward departure from the guideline sentence for a conviction under 18 U.S.C. 924(c) or 929(a), *see* Application Note 1 of § 2K2.4.”

*Reason for Amendment:* This amendment revises §§ 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) and 4B1.2 (Definitions of Terms Used in Section 4B1.1) to clarify guideline application for offenders convicted under 18 U.S.C. 924(c) and 929(a) who might also qualify as career offenders under the rules and definitions provided in §§ 4B1.1 (Career Offender) and 4B1.2. Pending further study, the Commission

has deferred a decision on whether any or all convictions for violations of 18 U.S.C. 924(c) should be considered "instant offenses" for purposes of the career offender guideline. This amendment preserves the *status quo* as it existed prior to the statutory changes to 18 U.S.C. 924(c), made by the Act to Throttle the Criminal Use of Guns, Pub. L. 105-386, that established a statutory maximum of life for all violations of the statute.

This amendment adds a new Application Note 3 to § 2K2.4 directing courts not to apply Chapter Three (Adjustments) or Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under § 2K2.4. This effectively prohibits the use of 18 U.S.C. § 924(c) convictions either to trigger application of the career offender guideline, § 4B1.1, or to determine the appropriate offense level under that guideline. Application Note 1 of § 4B1.2 also is amended to clarify, however, that prior convictions for violating 18 U.S.C. 924(c) will continue to qualify as "prior felony convictions" under the career offender guideline in most circumstances.

11. *Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(c) by striking "that the weapon was pointed or waved about, or displayed in a threatening manner." and inserting the following: "that all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was directly visible to that person. Accordingly, although the dangerous weapon does not have to be directly visible, the weapon must be present."

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1 by striking subdivision (d) in its entirety and inserting the following:

"(d) 'Dangerous weapon' means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but (I) closely resembles such an instrument; or (II) the defendant used the object in a manner that created the impression that the object was such an instrument (e.g. a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun)."

Section 2A3.1(b)(1) is amended by striking "(including, but not limited to, the use or display of any dangerous weapon)".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in

Note 1 by striking "where any dangerous weapon was used," and inserting "if any dangerous weapon was used or"; and by striking ", or displayed to intimidate the victim".

Section 2B3.1(b)(2) is amended by striking "displayed," each place it appears.

The Commentary to § 2B3.1 captioned "Application Notes" is amended by striking Note 2 in its entirety and inserting the following:

"2. Consistent with Application Note 1(d)(ii) of § 1B1.1 (Application Instructions), an object shall be considered to be a dangerous weapon for purposes of subsection (b)(2)(E) if (A) the object closely resembles an instrument capable of inflicting death or serious bodily injury; or (B) the defendant used the object in a manner that created the impression that the object was an instrument capable of inflicting death or serious bodily injury (e.g., a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun)."

Section 2B3.2(b)(3) is amended by striking "displayed," each place it appears.

Section 2E2.1(b)(1)(C) is amended by striking ", displayed".

*Reason for Amendment:* This amendment conforms the guideline definition of "brandish" found at Application Note 1(c) of § 1B1.1 (Application Instructions) to a statutory definition, which was added by the Act to Throttle the Criminal Use of Guns, Pub. L. 105-386, and is codified at 18 U.S.C. 924(c)(4). The purposes of this amendment are to (1) avoid confusion that can be caused by different guideline and statutory definitions of identical terms; and (2) increase punishment in some circumstances for persons who "make the presence of the weapon known to another person, in order to intimidate that person," regardless of whether the weapon is visible. As was the case prior to this amendment, the guideline definition of "brandish" applies to all dangerous weapons and not only to firearms.

The definition of "dangerous weapon" in Application Note 1(d) of § 1B1.1 also is amended to clarify under what circumstances an object that is not an actual, dangerous weapon should be treated as one for purposes of guideline application. The amendment is in accord with the decisions in *United States v. Shores*, 966 F.2d 1383 (11th Cir. 1992) (toy gun carried but never used by a defendant qualifies as a dangerous weapon because of its potential, if it were used, to arouse fear in victims and dangerous reactions by police or security personnel) and *United*

*States v. Dixon*, 982 F.2d 116 (3rd Cir. 1992) (hand wrapped in a towel qualifies as a dangerous weapon if the defendant's actions created the impression that the defendant possessed a dangerous weapon).

The amendment also deletes the term "displayed" wherever it appears in the *Guidelines Manual* in an enhancement with "brandished." Because "brandished" applies in any case in which "all or part of the weapon was displayed," the Commission determined the inclusion of "displayed" in these enhancements is redundant. This part of the amendment is not intended to make a substantive change in the guidelines.

12. *Amendment:* Chapter One, Part A, Subpart 4(b) is amended in the fifth sentence of the first paragraph by striking "and" before "the last"; and by inserting ", and § 5K2.19 (Post-Sentencing Rehabilitative Efforts)" after "(Coercion and Duress)".

Chapter Five, Part K, Subpart 2, is amended by inserting at the end the following:

"§ 5K2.19. *Post-Sentencing Rehabilitative Efforts* (Policy Statement)

Post-sentencing rehabilitative efforts, even if exceptional, undertaken by a defendant after imposition of a term of imprisonment for the instant offense are not an appropriate basis for a downward departure when resentencing the defendant for that offense. (Such efforts may provide a basis for early termination of supervised release under 18 U.S.C. 3583(e)(1).)

Commentary

*Background:* The Commission has determined that post-sentencing rehabilitative measures should not provide a basis for downward departure when resentencing a defendant initially sentenced to a term of imprisonment because such a departure would (1) be inconsistent with the policies established by Congress under 18 U.S.C. 3624(b) and other statutory provisions for reducing the time to be served by an imprisoned person; and (2) inequitably benefit only those who gain the opportunity to be resentenced *de novo*.

*Reason for Amendment:* This amendment was prompted by the circuit conflict regarding whether sentencing courts may consider an offender's post-offense rehabilitative efforts while in prison or on probation as a basis for downward departure at resentencing following an appeal. Compare *United States v. Rhodes*, 145 F.3d 1375, 1379 (D.C. Cir. 1998) (post-conviction rehabilitation is not a prohibited factor and, therefore, sentencing courts may

consider it as a possible ground for downward departure at resentencing); *United States v. Bradstreet*, 207 F.3d 76 (1st Cir. 2000); *United States v. Core*, 125 F.3d 74, 75 (2d Cir. 1997) (“We find nothing in the pertinent statutes or the Sentencing Guidelines that prevents a sentencing judge from considering post-conviction rehabilitation in prison as a basis for departure if resentencing becomes necessary.”) *cert. denied*, 118 S. Ct. 735 (1998); *United States v. Sally*, 116 F.3d 76, 80 (3d Cir. 1997) (holding that “post-offense rehabilitations efforts, including those which occur post-conviction, may constitute a sufficient factor warranting a downward departure”); *United States v. Rudolph*, 190 F.3d 720, 723 (6th Cir. 1999); *United States v. Green*, 152 F.3d 1202, 1207 (9th Cir. 1998) (*same*), with *United States v. Sims*, 174 F.3d 911 (8th Cir. 1999) (district court lacks authority at resentencing following an appeal to depart on ground of post-conviction rehabilitation which occurred after the original sentencing; refuses to extend holding regarding departures for post-offense rehabilitation to conduct that occurs in prison; departure based on post-conviction conduct infringes on statutory authority of the Bureau of Prisons to grant good-time credits). In *Sims*, the Eighth Circuit concluded that a rule allowing a departure at resentencing based on post-sentencing rehabilitation would result in unwarranted disparity because resentencing would be a fortuitous event benefitting only some defendants; would reinstate a parole-like system; and would interfere with the authority of the Bureau of Prisons to award good-time credits. *See Sims*, 174 F.3d at 912–13; *Rhodes*, 145 F.3d at 1384 (Silberman, J., dissenting).

The Commission determined that post-sentencing rehabilitative efforts should not provide a basis for a downward departure when resentencing a defendant initially sentenced to a term of imprisonment because such a departure would (1) be inconsistent with policies established by Congress under the Sentencing Reform Act, including the provisions of 18 U.S.C. 3624(b) for reducing the time to be served by an imprisoned person; and (2) inequitably benefit only those few who gain the opportunity to be resentenced *de novo*, while others, whose rehabilitative efforts may have been more substantial, could not benefit simply because they chose not to appeal or appealed unsuccessfully. Additionally, prohibition on downward departure for post-sentencing rehabilitative efforts is consistent with

Commission policies expressed in § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). This amendment does not restrict departures based on extraordinary post-offense rehabilitative efforts prior to sentencing. Such departures have been allowed by every circuit that has ruled on the matter post-*Koon*. *See e.g.*, *United States v. Brock*, 108 F.3d 31 (4th Cir. 1997).

13. *Amendment*: Chapter One, Part A, Subpart 4(d) is amended by adding an asterisk at the end of the last paragraph after the period; and by adding at the end the following footnote:

“\***Note**: Although the Commission had not addressed ‘single acts of aberrant behavior’ at the time the Introduction to the *Guidelines Manual* originally was written, it subsequently addressed the issue in Amendment 603 [this amendment], effective November 1, 2000. (*See Supplement to Appendix C, Amendment 603.*)”

Chapter Five, Part K, Subpart 2, as amended by Amendment 12 of this document, is further amended by adding at the end the following:

“§ 5K2.20. Aberrant Behavior (Policy Statement)

A sentence below the applicable guideline range may be warranted in an extraordinary case if the defendant’s criminal conduct constituted aberrant behavior. However, the court may not depart below the guideline range on this basis if (1) the offense involved serious bodily injury or death; (2) the defendant discharged a firearm or otherwise used a firearm or a dangerous weapon; (3) the instant offense of conviction is a serious drug trafficking offense; (4) the defendant has more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood); or (5) the defendant has a prior federal, or state, felony conviction, regardless of whether the conviction is countable under Chapter Four.

Commentary

*Application Notes:*

1. For purposes of this policy statement—

‘Aberrant behavior’ means a single criminal occurrence or single criminal transaction that (A) was committed without significant planning; (B) was of limited duration; and (C) represents a marked deviation by the defendant from an otherwise law-abiding life.

‘Dangerous weapon,’ ‘firearm,’ ‘otherwise used,’ and ‘serious bodily injury’ have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

‘Serious drug trafficking offense’ means any controlled substance offense

under title 21, United States Code, other than simple possession under 21 U.S.C. § 844, that, because the defendant does not meet the criteria under § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases), results in the imposition of a mandatory minimum term of imprisonment upon the defendant.

2. In determining whether the court should depart on the basis of aberrant behavior, the court may consider the defendant’s (A) mental and emotional conditions; (B) employment record; (C) record of prior good works; (D) motivation for committing the offense; and (E) efforts to mitigate the effects of the offense.”

*Reason for Amendment*: This amendment responds to a circuit conflict regarding whether, for purposes of downward departure from the guideline range, a “single act of aberrant behavior” (Chapter One, Part A, Subpart 4(d)) includes multiple acts occurring over a period of time. *Compare United States v. Grandmaison*, 77 F.3d 555 (1st Cir. 1996) (Sentencing Commission intended the word “single” to refer to the crime committed; therefore, “single acts of aberrant behavior” include multiple acts leading up to the commission of the crime; the district court should review the totality of circumstances); *Zecevic v. United States Parole Commission*, 163 F.3d 731 (2d Cir. 1998) (aberrant behavior is conduct which constitutes a short-lived departure from an otherwise law-abiding life, and the best test is the totality of the circumstances); *United States v. Takai*, 941 F.2d 738 (9th Cir. 1991) (“single act” refers to the particular action that is criminal, even though a whole series of acts lead up to the commission of the crime); *United States v. Pena*, 930 F.2d 1486 (10th Cir. 1991) (aberrational nature of the defendant’s conduct and other circumstances justified departure), with *United States v. Marcello*, 13 F.3d 752 (3d Cir. 1994) (single act of aberrant behavior requires a spontaneous, thoughtless, single act involving lack of planning); *United States v. Glick*, 946 F.2d 335 (4th Cir. 1991) (conduct over a ten-week period involving a number of actions and extensive planning was not “single act of aberrant behavior”); *United States v. Williams*, 974 F.2d 25 (5th Cir. 1992) (a single act of aberrant behavior is generally spontaneous or thoughtless); *United States v. Carey*, 895 F.2d 318 (7th Cir. 1990) (single act of aberrant behavior contemplates a spontaneous and seemingly thoughtless act rather than one which was the result of substantial planning); *United States v. Garlich*, 951 F.2d 161 (8th Cir. 1991)

(fraud spanning one year and several transactions was not a "single act of aberrant behavior"); *United States v. Withrow*, 85 F.3d 527 (11th Cir. 1996) (a single act of aberrant behavior is not established unless the defendant is a first-time offender and the crime was a thoughtless act rather than one that was the result of substantial planning); *United States v. Dyce*, 78 F.3d 610 (D.C. Cir.), *amd. on reh.* 91 F.3d 1462 (D.C. Cir. 1996) (*same*).

This amendment addresses the circuit conflict but does not adopt *in toto* either the majority or minority circuit view on this issue. As a threshold matter, this amendment provides that the departure is available only in an extraordinary case. However, the amendment defines and describes "aberrant behavior" more flexibly than the interpretation of existing guideline language followed by the majority of circuits that have allowed a departure for aberrant behavior only in a case involving a single act that was spontaneous and seemingly thoughtless. The Commission concluded that this application of the current language in Chapter One is overly restrictive and may preclude departures for aberrant behavior in circumstances in which such a departure might be warranted. For this reason, the Commission attempted to slightly relax the "single act" rule in some respects, and provide guidance and limitations regarding what can be considered aberrant behavior. At the same time, the Commission also chose not to adopt the "totality of circumstances" approach endorsed by the minority of circuits, concluding that the latter approach is overly broad and vague. The Commission anticipates that this compromise amendment will not broadly expand departures for aberrant behavior.

The amendment creates a new policy statement and accompanying commentary in Chapter Five, Part K (Departures) that sets forth the parameters of conduct and criminal history that the Commission believes appropriately may warrant departure as "aberrant behavior." The policy statement provides, in pertinent part, that "'aberrant behavior' means a single criminal occurrence or single criminal transaction." The Commission intends that the phrases "single criminal occurrence" and "single criminal transaction" will be somewhat broader than "single act", but will be limited in potential applicability to offenses (1) committed without significant planning; (2) of limited duration; and (3) that represent a marked deviation by the defendant from an otherwise law-abiding life. For offense conduct to be

considered for departure as aberrant behavior, the offense conduct must, at a minimum, have these characteristics. The Commission chose these characteristics after reviewing case law and public comment that indicated some support for the appropriateness of these factors.

The policy statement places significant restrictions on the type of offense and the criminal history of the offender that can be considered for this departure. The restrictions on the type of offense that can qualify reflect a Commission concern that certain offense conduct is so serious that a departure premised on a finding of aberrant behavior should not be available to those offenders who engage in such conduct. Similarly, the restrictions on criminal history reflect a Commission view that defendants with significant prior criminal records should not qualify for a departure premised on the aberrant nature of their current conduct.

The Commission recognizes that a number of other factors may have some relevance in evaluating the appropriateness of a departure based on aberrant behavior. Some of the relevant factors identified in the case law and public comment are listed in an application note.

14. *Amendment:* The Commentary to § 1B1.4 captioned "Background" is amended by striking:

“. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range. In addition, information that does not enter into the determination of the applicable guideline sentencing range may be considered in determining whether and to what extent to depart from the guidelines.”,

and inserting:

“in determining a sentence within the guideline range or from considering that information in determining whether and to what extent to depart from the guidelines. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range and may provide a reason for sentencing above the guideline range.”.

Chapter Five, Part K, Subpart 2, as amended by Amendment 13 of this document, is further amended by adding at the end the following:

“§ 5K2.21. Dismissed and Uncharged Conduct (Policy Statement)

The court may increase the sentence above the guideline range to reflect the actual seriousness of the offense based on conduct (1) underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement or for any other reason; and (2) that did not enter into the determination of the applicable guideline range.”.

Section 6B1.2(a) is amended in the second paragraph by striking "Provided, that" and inserting "However,".

The Commentary to § 6B1.2 is amended in the fourth paragraph by adding at the end the following:

“Section 5K2.21 (Dismissed and Uncharged Conduct) addresses the use, as a basis for upward departure, of conduct underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement.”.

*Reason for Amendment:* This amendment addresses the circuit conflict regarding whether a court can base an upward departure on conduct that was dismissed or not charged as part of a plea agreement in the case. According to the majority of circuits, the sentencing court, in determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, may consider without limitation any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law. See § 1B1.4 (Information to be Used in Imposing Sentence) and 18 U.S.C. 3661. These courts hold that § 6B1.2 (Standards for Acceptance of Plea Agreements) does not prohibit a court from considering conduct underlying counts dismissed pursuant to a plea agreement. The minority circuit view holds that a departure based on conduct uncharged or dismissed in the context of a plea agreement is inappropriate. Courts holding the minority view emphasize the need to protect the expectations of the parties to the plea agreement. Compare *United States v. Figaro*, 935 F.2d 4 (1st Cir. 1991) (allowing upward departure based on uncharged conduct); *United States v. Kim*, 896 F.2d 678 (2d Cir. 1990) (allowing upward departure based on related conduct that formed the basis of dismissed counts and based on prior similar misconduct not resulting in conviction); *United States v. Baird*, 109 F.3d 856 (3d Cir.), *cert. denied*, 118 S. Ct. 243 (1997) (allowing upward

departure based on dismissed counts if the conduct underlying the dismissed counts is related to the offense of conviction conduct) (citing *United States v. Watts*, 519 U.S. 148 (1997)); *United States v. Barber*, 119 F.2d 276, 283–84 (4th Cir. 1997) (*en banc*); *United States v. Cross*, 121 F.3d 234 (6th Cir. 1997) (allowing upward departure based on dismissed conduct) (citing *Watts*); *United States v. Ashburn*, 38 F.3d 803 (5th Cir. 1994) (allowing upward departure based on dismissed conduct); *United States v. Big Medicine*, 73 F.3d 994 (10th Cir. 1995) (allowing departure based on uncharged conduct), with *United States v. Ruffin*, 997 F.2d 343 (7th Cir. 1993) (error to depart based on counts dismissed as part of plea agreement); *United States v. Harris*, 70 F.3d 1001 (8th Cir. 1995) (*same*); *United States v. Lawton*, 193 F.3d 1087 (9th Cir. 1999) (court may not accept plea bargain and later consider dismissed charges for upward departure in sentencing).

This amendment allows courts to consider for upward departure purposes aggravating conduct that is dismissed or not charged in connection with a plea agreement. This approach is consistent with the principles that underlie § 1B1.4 and 18 U.S.C. 3661 and preserves flexibility for the sentencing judge to impose an appropriate sentence within the context of a charge-reduction plea agreement.

15. *Amendment*: Section 2B5.1(b)(2) is amended by inserting “level” after “increase to”.

The Commentary to § 2D1.1 captioned “Application Notes” is amended in Note 20 by striking “Under subsection (b)(5), the enhancement” and inserting “Subsection (b)(5)”; by striking “under this subsection” and inserting “under subsection (b)(5)”; by striking “§ 5B1.3” and inserting “§§ 5B1.3”; and by striking “§” before “5D1.3”.

Section 2D1.11(b) is amended by adding at the end the following:

“(3) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.”

Section 2D1.11(d) is amended in subdivision (9) by striking “At least 1.44 G but less than 1.92 KG of Isosafrole;” and inserting “At least 1.44 KG but less than 1.92 KG of Isosafrole;”; and by striking “At least 1.44 G but less than 1.92 KG of Safrole;” and inserting “At least 1.44 KG but less than 1.92 KG of Safrole;”.

Section 2D1.11(d) is amended in subdivision (10) by striking “Less than 1.44 G” before “of Isosafrole;” and

inserting “Less than 1.44 KG”; and by striking “Less than 1.44 G” before “of Safrole;” and inserting “Less than 1.44 KG”.

The Commentary to § 2D1.11 captioned “Application Notes” is amended by adding at the end the following:

“8. Subsection (b)(3) applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under subsection (b)(3) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).”

Section 2D1.12(b) is amended by striking “Characteristic” and inserting “Characteristics”; and by adding at the end the following:

“(2) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.”

The Commentary to 2D1.12 captioned “Application Notes” is amended by adding at the end the following:

“3. Subsection (b)(2) applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under subsection (b)(2) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety

(including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).”

The Commentary to § 2K2.1 captioned “Statutory Provisions” is amended by striking “(e), (f), (g), (h), (j)–(n)” and inserting “(e)–(i), (k)–(o)”.

Section 5B1.3(a) is amended by striking the asterisk after “Conditions”; in subdivision (8) by striking the period after “§ 3563(a)” and inserting a semicolon; and by adding at the end the following:

“(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.”;

Section 5B1.3 is amended by striking the footnote at the end in its entirety as follows:

“\***Note**: Effective one year after November 26, 1997, section 3563(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105–119) to add the following new mandatory condition of probation:

(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105–119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.”

Section 5D1.3(a) is amended by striking the asterisk after “Conditions”; in subdivision (6) by striking the period after “§ 3013” and inserting a semicolon; and by adding at the end the following:

“(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.”;

Section 5D1.3 is amended by striking the footnote at the end in its entirety as follows:

**\*\*Note:** Effective one year after November 26, 1997, section 3583(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105-119) to add the following new mandatory condition of supervised release:

(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105-119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.”.

Reason for Amendment: This five-part amendment makes various technical and conforming changes.

First, the amendment corrects a typographical error in § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) by inserting a missing word in subsection (b)(2).

Second, the amendment corrects a typographical error in the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical) regarding certain quantities of Isosafrole and Safrole by changing those quantities from grams to kilograms.

Third, the amendment corrects an omission that was made during prior, final deliberations by the Commission on amendments to implement the Comprehensive Methamphetamine Control Act of 1996 (the “Act”), Pub. L. 104-237. Specifically, the proposal amends §§ 2D1.11 and 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment) to add an enhancement for environmental damage associated with methamphetamine offenses. The Commission previously had intended to amend these guidelines in this manner, but due to a technical oversight, the final amendment did not implement that intent.

The Act directed the Commission to determine whether the guidelines adequately punish environmental violations occurring in connection with

precursor chemical offenses under 21 U.S.C. 841(d) and (g) (sentenced under § 2D1.11), and manufacturing equipment offenses under 21 U.S.C. 843(a)(6) and (7) (sentenced under § 2D1.12). On February 25, 1997, the Commission published two options to provide an increase for environmental damage associated with the manufacture of methamphetamine, the first by a specific offense characteristic, the second by an invited upward departure. See 62 FR 8487 (proposed Feb. 25, 1997). Both options proposed to make amendments to §§ 2D1.11, 2D1.12, and 2D1.13. Additionally, although the directive did not address manufacturing offenses under 21 U.S.C. 841(a), the Commission elected to use its broader guideline promulgation authority under 28 U.S.C. 994(a) to ensure that environmental violations occurring in connection with this more frequently occurring offense were treated similarly. Accordingly, the published options also included amendments to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking).

The published options were revised prior to final action by the Commission. However, in the revision that was presented to the Commission for promulgation in late April 1997, amendments to §§ 2D1.11 and 2D1.12 mistakenly were omitted from the option to provide a specific offense characteristic, although that revision did refer to §§ 2D1.11 and 2D1.12 in the synopsis and included amendments to these guidelines in the upward departure option. (The revision did not include any amendments to guideline § 2D1.13, covering record-keeping offenses, because, upon further examination, it seemed unlikely that offenses sentenced under this guideline would involve environmental damage.) Accordingly, when the Commission voted to adopt the option providing the specific offense characteristic for §§ 2D1.1, 2D1.11, and 2D1.12, the vote effectively was limited to what was

before the Commission, *i.e.*, an environmental damage enhancement for § 2D1.1 only. This amendment corrects that error and makes minor, conforming changes to the relevant application note in § 2D1.1.

Fourth, the amendment updates the Statutory Provisions of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition) to conform to statutory redesignations made to 18 U.S.C. 924 (and already conformed in Appendix A (Statutory Index)).

Finally, the amendment updates §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release). Effective November 26, 1998, 18 U.S.C. 3563(a) and 3583(a) were amended to add a new mandatory condition of probation and supervised release requiring a person convicted of a sexual offense described in 18 U.S.C. 4042(c)(4) (enumerating several sex offenses) to report to the probation officer the person’s address and any subsequent change of address, and to register as a sex offender in the state in which the person resides. See section 115 of Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Pub. L. 105-119). Because the effective date of this change was later than the effective date of the last issued *Guidelines Manual* (November 1, 1998), the Commission did not amend §§ 5B1.3 and 5D1.3 to reflect the new condition. However, the Commission did provide a footnote in each guideline setting forth the new condition and alerting the user as to the date on which the condition became effective. This amendment includes the sex offender condition as a specific mandatory condition of probation and supervised release in both guidelines rather than in a footnote.

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# Federal Register

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**Tuesday,  
May 9, 2000**

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**Part III**

## **Department of Agriculture**

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**Food and Nutrition Service**

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**7 CFR Parts 210 and 220**

**National School Lunch Program and  
School Breakfast Program: Additional  
Menu Planning Approaches; Final Rule**

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Parts 210 and 220**

RIN: 0584-AC38

**National School Lunch Program and School Breakfast Program: Additional Menu Planning Approaches**

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Healthy Meals for Children Act expanded the number of approaches that schools may use to plan menus under the National School Lunch and School Breakfast Programs. One of the menu planning approaches specified in that law is the traditional meal pattern that was in effect in School Year 1994-95. This final rule also adds a method that allows schools to use "any reasonable approach" to plan menus. The various menu planning approaches now available allow schools greater flexibility in planning menus that both meet the nutrition requirements of the school lunch and breakfast programs and appeal to the nation's schoolchildren. We are also clarifying several State agency monitoring responsibilities associated with the implementation of the nutrition standards of the National School Lunch Act.

EFFECTIVE DATE: June 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone 703-305-2620.

**SUPPLEMENTARY INFORMATION:****Background***What Is the Purpose of this Rule?*

The Food and Nutrition Service (FNS or we) published a proposed rule on May 15, 1998 (63 FR 27162), as another step in our efforts to enhance the nutritional quality of the National School Lunch Program (NSLP) and School Breakfast Program (SBP). That rule proposed to increase the number of menu planning approaches available to schools and to clarify how State agencies should assess the progress of schools in meeting the Dietary Guidelines for Americans ("the Dietary Guidelines") and other nutrition standards. The purpose of this final rule is to discuss the comments we received and any revisions we made to the

proposal as well as to codify these changes into the regulations.

*How Has FNS Modified the Nutrition Requirements for School Lunches and Breakfasts?*

In 1995, we issued a final rule (60 FR 31188, June 13, 1995) that updated the nutrition requirements for school lunches and breakfasts. School lunches and breakfasts now must meet the Dietary Guidelines including limits on fat (30% or less of total calories) and saturated fat (less than 10% of total calories). School lunches and breakfasts must also meet specific minimum standards for key nutrients (protein, calcium, iron, Vitamin A and Vitamin C), and for calories.

To help schools implement the updated nutrition standards, we provided additional menu planning approaches. Initially, we added two analysis-based approaches—nutrient standard menu planning (NSMP) and assisted nutrient standard menu planning (ANSMP). Schools adopting these approaches use computer analyses of the menus to determine if they meet the appropriate nutrient and calorie levels as well as the limits on fat and saturated fat. Schools using NSMP analyze their own menus. Schools using ANSMP rely on an outside entity (such as another school district) to conduct an analysis of their menus. Along with the analysis, recipes, product specifications, and such are provided to support the analyzed menus.

We then developed a meal pattern or food-based menu planning approach for schools that preferred this type of approach. This food-based menu planning approach is called the enhanced food-based menu planning approach. It is "enhanced" as the number of servings of grains/breads and fruits/vegetables were increased to provide sources of low-fat calories. In 1995, when we published the final rule, the meal pattern that schools had used since the beginning of the lunch program was going to be phased out. However, as discussed below, that meal pattern as well as an option for schools to develop alternate menu planning approaches were made available through legislation.

**What Were the Provisions in the Proposed Rule?**

The May 15, 1998, proposed rule addressed and requested comments on the following issues:

1. Reinstating the meal pattern in effect in School Year 1994-95 as one of the permanent menu planning approaches; this meal pattern is

designated "the traditional food-based menu planning approach";

2. Establishing Recommended Dietary Allowances (RDAs) and calories levels for the traditional menu planning approach using the age/grade groups already established for the meal pattern;

3. Establishing guidelines for any reasonable approach to menu planning (hereinafter called alternate menu planning approach) with two tiers: Minor, pre-approved modifications to existing menu planning approaches and major changes to existing approaches or new approaches developed by either a school food authority (SFA) or a State agency;

4. Requiring approval for alternate menu planning approaches unless the alternate approach has on-going State agency support and assistance, has five or more SFAs adopting the approach and had a public notification issued prior to implementation of the alternate approach;

5. Requiring that any alternate menu planning approaches based on nutrient analysis use weighted averages and approved software unless the approach has on-going State agency support and assistance and five or more SFAs adopt the approach;

6. Clarifying certain monitoring procedures for State agencies; and

7. Citing the 1995 Dietary Guidelines.

**What Is the Statutory Basis for These Changes?**

This final rule implements sections of two public laws (Pub. L.):

Pub.L. 104-149, the Healthy Meals for Children Act (May 29, 1996); and Pub.L. 104-193, the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (August 22, 1996).

Pub.L. 104-149 expanded the number of menu planning approaches which schools may adopt. One menu planning approach specified in Pub.L. 104-149 is the approach that was in effect for School Year 1994-95. We named this menu planning approach the "traditional food-based menu planning approach." The other menu planning approach included in the statute was "any reasonable approach, within guidelines established by the Secretary. . . ."

Before a proposed rule to implement Pub.L. 104-149 was published, Pub.L. 104-193, was enacted. This law amended Section 9(f) of the National School Lunch Act (NSLA) (42 USC 1758(f)(1)(B)) to require that school lunches and breakfasts provide, over a week, one-third and one-fourth, respectively, of the RDAs established by the Food and Nutrition Board of the

National Research Council of the National Academy of Sciences. However, our regulations at 7 CFR § 210.10 already included these requirements.

**Who Commented on the Proposed Rule?**

The comment period for the proposed rule ended on November 12, 1998. We received a total of 70 comment letters. The following chart shows the distribution of commentors by type:

Type of commentor	Number of responses
Local level school food service professionals .....	29
State level school food service professionals .....	15
Advocacy groups .....	2
School food service associations .....	2
Food industry and food industry groups .....	19
Health/nutrition professionals ...	3
Total .....	70

**Discussion of comments and their resolution**

*What Did We Ask for Comments On?*

We solicited comments on the specific provisions to implement “any reasonable approach” to menu planning as well as other provisions concerning revisions to the nutrition standards and to the assessment requirements. In addition, we specifically requested comments on areas that were not proposed changes to the regulations. One of these areas was the appropriateness of the age/grade groups used to determine the nutrient levels under the traditional food-based menu planning approach.

*What Are the Basic Age/Grade Requirements for Planning School Lunches?*

In order to provide schools with a framework for menu planning and to reflect the increasing nutrient needs of children as they grow, we established age/grade groupings for both nutrient levels and, for the food-based menu planning approaches, portion sizes. Because we do not mandate portion

sizes for the NSMP and ANSMP approaches, age/grade groupings are only established for nutrients. The age/grade groupings for the enhanced-food based approach (both portion sizes and nutrients) and the nutrient standard approach (nutrients only) are the same. Age/grade groupings for nutrients in the traditional food-based approach were not addressed when we initially established nutrient standards since that approach was to be phased-out.

When the traditional food-based menu planning approach was reinstated by law, we developed a chart with the RDA requirements that matched the age/grade groups used in the traditional approach in effect for school year 1994–1995. These age/grade groups are two preschool groups, grades K–3, and 4–12. There is an optional group for grades 7–12. We used the same groups as those already required for portion sizes since the law stipulated that the “school nutrition meal pattern in effect for the 1994–1995 school year” be one of the approaches available to schools. These age/grade groupings are different than the ones developed for the new menu planning approaches.

There are a significant number of schools that continue to use the traditional menu planning approach and offer lunches to all ages of children using only the meal pattern for grades 4–12 (Group IV). Use of Group IV for all students regardless of age is allowed by the regulations and is common practice in the NSLP. Because of this situation, we specifically asked for comments on the appropriateness of using a single age/grade group to establish the nutrient standards for schools using the traditional approach.

*What Did the Commentors Suggest?*

We received a total of 17 comments on this issue. Nine commentors supported use of the same set of age/grade groups for the nutrient levels for all menu planning approaches (preschool, K–6, 7–12, optional K–3). Eight commentors supported using the same age/grade groups for nutrient levels in both of the food-based menu planning approaches. The preferred

groups were those established for the enhanced food-based menu planning approach.

As discussed earlier, we cannot make changes to the traditional food-based approach. Congress was clear that the traditional meal pattern must be available. Therefore, we are adopting without revision, the proposed changes at §§ 210.10(d)(1) and 220.8(c)(1), which provide the minimum requirements for nutrient levels under the traditional food-based menu planning approach. However, under the provisions for alternate menu planning approaches, we are adding two optional modifications for the lunch program concerning age/grade groups. These are discussed below.

*What Modifications of Age/Grade Groups Are Permitted Under the Food-Based Menu Planning Approaches?*

The first proposed modification concerned using age/grade groups for the majority of children enrolled. Children enrolled in a given school may span different age/grade groups for the nutrient and calorie levels and for the corresponding portion sizes for components under the food-based menu planning approaches. Under NSMP and ANSMP, if only one age or grade is outside the established levels for most of the children, schools may use the nutrition standards for the majority. We proposed extending this option to the food-based approaches for consistency and flexibility. We received nine comments on this provision, with seven supporting it. We are adopting this provision as final. Schools using either food-based approach may plan menus using the minimum nutrient and quantity requirements applicable to the majority of children as long as only one age or grade is outside the levels for the majority of children. This change is found at § 210.10(l)(2)(iii).

The second modification allows schools using the traditional food-based menu planning approach to adopt the nutrient standards developed for the other menu planning approaches. Under this modification, schools could do the following:

For grades	Portion sizes	Nutrient levels
K–6 .....	Use the portion sizes for grades 4–12 from the traditional food-based menu planning approach.	Use the nutrient levels for grades K–6 from the other menu planning approaches.
7–12 .....	Use the portion sizes for grades 4–12 from the traditional food-based menu planning approach.	Use the nutrient levels for grades 7–12 from the other menu planning approaches.

This modification allows schools to continue to follow the familiar portion sizes from the traditional food-based

menu planning approach for children in grades K–6 while adopting the more focused nutrient and calorie levels

developed under the other menu planning approaches. For children in grades 7–12, this modification would

allow schools the option of following the portion sizes for grades 4–12 from the traditional food-based menu planning approach while meeting the nutrient and calorie levels specific to children in grades 7–12. Use of the more accurate groupings for the nutrient and calorie levels gives schools better information on how well they are meeting the needs of their students. The State agency would also use the modification as the basis for its nutrition assessment review. This modification is found at § 210.10(l)(2)(ii).

*Why Not Count a Grain-Based Dessert Under Both of the Food-Based Menu Planning Approaches?*

Under the enhanced food-based menu planning approach, schools may count one grain-based dessert each day towards the weekly total. This policy gives additional flexibility for menu planners as the number of required grain/bread items increased substantially over the number required for the traditional menu planning approach. For example, for grades 7–12, the traditional approach food-based menu planning approach requires eight grain/bread servings (but recommends 10 servings) while 15 servings are required for the enhanced food-based approach. We were asked to extend this policy to the traditional menu planning approach.

We did not propose making this option available as a modification allowed under alternate approach provisions. However, we requested comments on this issue. We received 28 comments on this issue, 21 of which supported extending counting grain-based desserts under the traditional menu planning approach.

While most of the comments supported a provision that would count a grain-based dessert under the traditional menu planning approach, we are not including it in this final rule because none of the commentors provided a strong justification other than preference. We continue to believe that counting up to one grain-based dessert daily as a serving of the grains/breads component for the traditional food-based menu planning approach is too significant a proportion of the total number of required grain/bread items (up to 5 of only 8 servings versus up to 5 of 12 or 15 servings in the enhanced food-based menu planning approach). A child selecting a grains-based dessert on a daily basis would have the majority of their grains/breads component over the week met through the consumption of dessert.

*What Did Commentors Say About Reinstatement of the Traditional Meal Pattern?*

In the proposed rule, we incorporated the traditional meal pattern and any of its specific provisions in §§ 210.10(k) and 220.8(g) which outline the food-based menu planning approaches. We received 25 comments on this provision with only two comments expressing concern that following the traditional menu planning approach makes it more difficult to meet the nutrition standards. The main concern of commentors about the traditional food-based menu planning approach is the age/grade groups used for the nutrition standards which we discussed earlier. We are hopeful that the optional modifications for the food-based menu planning approaches will alleviate the commentors' concerns. Therefore, the proposed provisions to incorporate the traditional meal pattern as a permanent option are adopted without change.

*What Guidelines Were Proposed for Alternate Menu Planning Approaches?*

Public Law 104–149 allows SFAs to use “any reasonable approach” to menu planning. The law also states that these alternate methods must meet guidelines established by the Secretary. We proposed two distinct classes of alternate menu planning approaches. First, there are those approaches which make relatively minor modifications to the four established menu planning approaches. For this type of approach, we proposed that State agencies establish a general policy allowing SFAs to adopt such approaches without prior approval from FNS. The second class of menu planning approaches involves unique proposals that depart significantly from existing approaches. Because this latter class of alternate menu planning approaches would be more unique, we proposed guidelines for their development.

*In General, What Did Commentors Say About the Provisions for Alternate Menu Planning Approaches?*

We received 23 comments on the overall concept of allowing States and SFAs to develop their own menu planning approaches. All but one comment supported the concept in general. We also received 13 comments on the guidelines we proposed for the alternate approaches. Ten of these comments stated that the guidelines were too complex, too restrictive, and needed to be more general in nature. We also received a number of comments on the specific provisions for alternate

menu planning approaches which are discussed separately below.

We are required by the statute to provide guidelines for alternate menu planning approaches. We based these guidelines primarily on other statutory requirements such as serving fluid milk and meeting the Dietary Guidelines for Americans. The other guidelines we proposed addressed regulatory provisions on program and nutritional integrity for the school lunch and breakfast programs. Therefore, we are adopting the general structure for alternate menu planning approaches and their guidelines as final in § 210.10(l) and § 220.8(h). Revisions and modifications are discussed below in detail.

*What Was Proposed About Minor Pre-approved Modifications to Existing Menu Planning Approaches?*

The first class of alternate menu planning approaches proposed was specific, minor modifications to provisions of the existing menu planning approaches. While the State agency may require prior approval or may establish additional guidelines for their adoption, these modifications could be “pre-approved” as State agencies may allow their use without any additional review. The modifications we proposed only apply to the NSLP. Two of these modifications concern adapting age/grade groups to the school and were previously discussed. The third modification allows a weekly meat/meat alternate standard and is discussed below.

*What Was Proposed About the Weekly Meat/Meat Alternate Standard?*

We proposed that schools using either of the food-based menu planning approaches be allowed to vary the quantity of meat/meat alternate on a daily basis as long as the total amount served over the school week equals the minimum daily quantity multiplied by the number of serving days in the week. We were asked to consider this option because it is not always practical to offer the full daily minimum portion of the meat/meat alternate component required for the lunch program for the food-based menu planning approaches. For example, a serving of less than the required four tablespoons of peanut butter or two ounces of cheese in a sandwich may produce a more appealing entree while the full amount required can lead to waste. We proposed that the minimum amount of meat/meat alternate served on a given day could be only one ounce (or its equivalent) provided that the full 10 ounces (for grades 4–12 in the traditional approach/

grades 7–12 for the enhanced approach) or their equivalent of meat/meat alternate were available over a five day week. This would provide menu planners using a food-based approach much of the same flexibility enjoyed by their counterparts using NSMP while still ensuring that minimum quantities of essential foods were offered to children over a week's time. We noted that the option to vary the size of the meat component does not apply when the minimum quantity requirement is one ounce or less.

#### *What Did Commentors Say About the Proposal on a Weekly Meat/Meat Alternate Standard?*

We received 31 comments on this issue with 25 supporting the general idea. However, some of the commentors requested some clarification about how the option would work in schools with multiple choices of meat/meat alternate and those having offer versus serve (OVS) procedure. Other commentors noted that this modification would be difficult to monitor by State reviewers given the possibility of multiple choices of meat/meat alternate items. As the majority of comments supported this provision, we are adopting it as final (at § 210.10(l)(2)(i) as proposed. Below, we discuss the comments on how each day's meat/meat alternate choices (which may range from a one ounce minimum to two or more ounces) are counted when determining the weekly total.

#### *What Is the Amount That Counts Towards the Weekly Total?*

A number of commentors asked us to clarify how to consider multiple choices of meat/meat alternate items on a daily basis. For example, on Tuesday, the school offers a 3 ounce hamburger, a 1½ ounce grilled cheese sandwich, and a turkey sandwich with 2 ounces of meat. Which item or average would be used for the weekly total?

Commentors suggested that the item with the most ounces of meat/meat alternate be counted. This is similar to the method used to determine the weekly total for grains/breads and is most advantageous to schools. Others recommend that the item with the fewest ounces be counted. This would help to alleviate the concern of a few commentors that some children, especially under OVS, may not take items that would give them the full 10 ounces over the week. One commentor recommended that schools with various menu choices offer at least one two ounce meat/meat alternate item daily. While this would ensure that a child could select an item with two ounces of

meat/meat alternate every day, it limits the school's flexibility to plan menus.

There are other components (fruits/vegetables and grains/breads) that have both daily and weekly minimums. We address how the weekly amounts are counted in guidance, not in the regulations. Therefore, to be consistent, we are not including this provision in the regulations. Also consistent with established practice and in response to some of the commentors' suggestions, schools would count the largest meat/meat alternate item offered. Using our earlier example, the three ounces of meat in the hamburger would be counted towards the weekly total. This method is easiest to track, both for schools and for State agency reviewers. We will be incorporating this method into our guidance materials as appropriate. In terms of nutritional integrity, the lunches offered by schools adopting this modification must continue to meet the appropriate nutrient levels and the Dietary Guidelines. Therefore, § 210.10(l)(2)(i), as proposed, is adopted as final without change.

#### *Should the Weekly Option for Meat/Meat Alternates Be Extended to the Breakfast Program?*

We did not propose extending this modification to the meat/meat alternate-grains/breads component of school breakfasts because flexibility is already provided under the food-based menu planning approaches. We did ask for comments on this issue. We received only seven comments—three supporting extending this option to the SBP and four recommending we do not include it as an option for the breakfast program. We are not extending this option to the SBP in the final rule. We continue to believe there is already adequate flexibility to vary portion sizes of the meat/meat alternate component in the breakfast program.

#### *What Was Proposed Concerning Major Changes or New Approaches Proposed by SFAs or State Agencies?*

We also proposed guidelines for a second class of alternate menu planning approaches which involves major changes to one of the existing menu planning approaches. These alternate approaches could be developed by either SFAs or State agencies. We proposed some basic guidelines concerning written submissions, approval and monitoring procedures. We also provided other guidelines based primarily on the statutory requirements and those provisions that we felt were vital to the programs' nutritional and fiscal integrity in order to allow States

agencies and SFAs maximum flexibility to develop creative alternate menu planning approaches. Below, we discuss the major guidelines and any comments received that addressed that guideline.

#### *What Were the General Comments About Alternate Approaches That Involved Major Changes?*

We received 13 comments on the overall policies for alternate approaches, with 3 commentors approving of the methodologies and 10 commentors disapproving. Those that disapproved felt the procedures were too complex and restrictive. Commentors stated that we needed more general guidelines that provided more flexibility. One commentor stated that the alternate approach should only need to demonstrate that the nutrition standards are met, that a reimbursable lunch or breakfast is easily identifiable and that the approach can be monitored.

In response to these general comments, as discussed earlier, we are required by the statute to issue guidelines on use of alternate menu planning approaches. The regulatory guidelines are limited to the statutory requirements and only those elements needed to support program integrity, such as an identifiable reimbursable lunch or breakfast. The guidelines and specific comments on them are discussed below.

#### *What Was Proposed About Written Submissions?*

We proposed that any alternate menu planning approaches be available in writing. A written document is needed for the State agency or FNS to review prior to approval and for the State agency to follow when monitoring compliance with the procedures of the alternate menu planning approach and with the nutrition assessment and compliance aspects of the programs. We proposed requiring that any alternate menu planning approach subject to State agency or FNS approval be submitted in writing. We also proposed that any alternate approach not needing prior approval must be available in writing for review purposes. We received no comments on written submissions. Therefore we are including the provision on written submissions in the final regulation at §§ 210.10(l)(3) and 220.8(h)(2). We are also incorporating a notification procedure for certain State agency-level alternate approaches. When a State agency implements an alternate approach that is exempt from FNS approval, we are requiring that we be notified in writing of its use. This is simply a notification procedure to keep FNS informed and to

allow us to share this information with other State agencies that might wish to adopt a similar alternate approach. This provision is incorporated into § 210.10(l)(3) and § 220.8(h)(2).

*What Was Proposed Concerning the Approval of Major Changes Requested by SFAs?*

We proposed that any major change or new approaches developed by SFAs be subject to State agency review and approval. State agency approval is critical because major variations developed and used only by SFAs should be carefully assessed to gauge potential impact on the delivery of lunches and breakfasts to children, both nutritionally and fiscally. Further, SFAs would not have the benefit of the State agency's expertise when designing their own alternate menu planning approach. A State agency review would also help to ensure that program guidelines were met and that the SFA had the ability to administer an alternate menu planning approach. We received only four comments concerning approval of SFAs' proposed alternate approaches. Three commentors supported the prior approval requirement, while one commentor noted that the process will add to the State agency's workload. While we recognize that this is an additional task for State agencies, we also feel that a prior review and approval is vital to program integrity. Therefore, we are adopting the proposal without change at § 210.10(l)(3)(i) and § 220.8(h)(2)(i).

*In General, What Was Proposed About The Approval Process For State-Level Alternate Menu Planning Approaches?*

We proposed that only certain types of State agency-developed alternate menu planning approaches be subject to approval by FNS. State agency-developed alternate menu planning approaches would be reviewed and approved by FNS regional offices *unless* there was an on-going State agency/SFA partnership and enough SFAs intended to adopt the alternate menu planning approach to warrant the significant involvement of the State agency. We received only three comments on State-level approaches that required pre-approval, two of which supported the review and approval process. Therefore, we are adopting these provisions as proposed at § 210.10(l)(3)(ii) and § 220.8(h)(2)(ii).

*When Are State-Level Alternate Approaches Not Subject to FNS Approval?*

The next type of alternate menu planning approach could also involve

either modifications to one of the existing menu planning approaches or development of an altogether new approach. However, we proposed that these alternate approaches would *not* need FNS approval if:

- The State agency is an active and on-going partner with the schools;
- There are a sufficient number of SFAs adopting the alternate approach to warrant the State agency's commitment of resources necessary to its successful operation; and
- The State agency issues an announcement notifying the public of the alternate menu planning approach.

By being an active and on-going partner with SFAs and thus continuing to be involved with the operation of the alternate approach, the State agency has an oversight role. Also, in this capacity, the State agency has the ability to promptly adjust the policies and procedures of the alternate approach to ensure efficient and effective operation and compliance with all applicable requirements. This type of State agency-developed alternate approach is intended to allow innovative, large-scale State agency-sponsored menu planning approaches to operate without prior approval.

We proposed that these alternate approaches must be adopted by at least five SFAs within the State. We also proposed that States issue a public announcement so that any concerned parents, students, or program administrators are advised of the change. We also requested comments on whether States should also hold public hearings (in accordance with established State procedures) on these types of alternate approaches.

*Are There Any Exemptions Specifically for State-Level Alternate Approaches With On-Going Support?*

Yes. We also proposed that alternate menu planning approaches supported by the State agency's expertise and technical assistance were not required to meet certain guidelines that are required for other major changes. These guidelines affect alternate menu planning approaches that use nutrient analysis. The two guidelines are the requirement to use FNS approved software and to weight the menu selections.

*What Did the Commentors Say About State Level Alternate Approaches With On-Going Support?*

We received a total of 26 comments on these types of alternate menu planning approaches, primarily on public announcements and hearings. Three commentors felt that there should

be prior approval for any alternate approach that would be significantly different from the standard requirements. One commentor approved of the various exemptions, and one commentor felt that FNS approved software should be used.

We agree that any type of alternate menu planning approach needs to be scrutinized and needs oversight. We are establishing these controls for all alternate approaches, albeit in different ways. We are requiring prior review for any alternate approach developed by SFAs as we recognize that the State agency has the experience to determine if the alternative is feasible. The State agency needs to determine if all required elements are addressed and if the school has the resources to follow the alternate procedures. We also have established oversight for State agency-developed alternate approaches, depending upon how much on-going interaction the State agency will have with the schools using them. If the State agency will simply make their alternate approach available but not assist schools in a systematic way, we are requiring prior FNS approval to determine if the alternative is generally workable and if the required elements are met. We are, however, allowing additional flexibility for those States that commit to a continuous, systematic oversight of schools that adopt the alternate approach. Because we believe that we have established adequate methods for oversight, we are adopting the proposed requirements on the approval and guideline exemptions for alternate approaches with on-going State support. These provisions are found at § 210.10(l)(3)(iii) and § 220.8(h)(2)(iii).

*What Did Commentors Say About Public Announcements and Public Hearings?*

We proposed requiring that States issue a public announcement for any alternate menu planning approach developed by the State agency. We also asked for comments on the possibility of requiring a public hearing concerning the alternate approach. Twenty-one comments were received on these issues—seven on the public announcement proposal and 14 on the proposal for public hearings. Five of those that commented on the proposal for public announcements opposed it, saying notification should be left to the State agency, depending on any internal requirements. Two commentors supported the public announcement proposal, suggesting that a comment period be required. Fourteen commentors mentioned the proposed

requirement for public hearings, and all opposed it.

Given the opposition, we are deleting our proposed requirement for a public announcement. We are also not adding a requirement for a public hearing. We feel that States should have the flexibility to determine if a public announcement is warranted, either by the nature of the intended changes to menu planning or by State law or precedent. Further, it would be difficult and inefficient for those States that do not have an existing procedure to establish a procedure just for our purposes. Therefore, this final rule does not include the provision that was proposed at §§ 210.10(l)(2)(iii)(C) and 220.8(h)(2)(iii)(C).

#### *What Were the Proposed Guidelines for Alternate Menu Planning Approaches?*

As we mentioned earlier, we established a limited number of guidelines for alternate approaches. These guidelines concerned: Offering fluid milk, offer versus serve, the nutrition standards, competitive foods, how various foods are counted towards meeting the requirements for reimbursable meals, identification of reimbursable lunch or breakfast, monitoring, weighted averages and approved software. In the preamble to the proposed rule, we discussed these guidelines in detail. In this final rule, we will summarize each and discuss any comments that were received on them.

#### *What Was Proposed About Offering Fluid Milk?*

Section 9(a)(2) of the NSLA (42 U.S.C. 1758(a)(2)) requires that schools offer fluid milk to children participating in the NSLP. Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1773 (e)(2)), requires that a combination of foods be served in the SBP and that breakfasts “. . . meet minimum nutritional requirements prescribed by the Secretary. . . .” The provision of fluid milk is one of the minimum nutritional requirements established for the SBP under § 220.8. Therefore, any alternate menu planning approach must also offer fluid milk for both the NSLP and SBP. Since we received no comments and because this requirement is statutory, we are adopting it as final without change. The provisions requiring that milk be offered in the school programs for any alternate menu planning approach are found in this final rule at § 210.10(l)(4)(i) and § 220.8(h)(3)(i), for the NSLP and SBP, respectively.

#### *What Was Proposed About Offer Versus Serve (OVS)?*

Section 9(a)(3) of the NSLA, (42 U.S.C. 1758(a)(3)) requires that schools implement OVS in the NSLP for senior high school children; at local option, SFAs may adopt OVS in the lunch program for lower grades as well. Section 4(e)(2) of the CNA (42 U.S.C. 1773(e)(2)) gives local SFAs the option of adopting OVS for the SBP. We included the OVS provisions in the guidelines for alternate menu planning approaches, stressing that any modifications to OVS must be based on the existing regulatory OVS structures as much as possible. The description of the alternate approach must indicate what age/grade groups are included, how plate waste would be reduced and how the lunch or breakfast, as taken, will provide a reasonable level of nutrients and calories. Any modifications to the existing OVS procedures must include the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable lunch or breakfast. We received no comments on this issue. We are adopting as final without changes at § 210.10(l)(4)(ii) and § 220.8(h)(3)(ii).

#### *What Was Proposed About Nutrition Standards?*

Section 9(f) of the NSLA (42 U.S.C. 1758(f)) requires school lunches to approximate, over a week's time, one-third of the RDAs (breakfasts must provide one-fourth) needed by growing children of different ages. In addition, menus must comply with the recommendations of the Dietary Guidelines. Because these requirements cannot be modified, we included them as guidelines for alternate approaches in the proposed rule.

We proposed that any alternate menu planning approach must show how these nutrition standards would be met for the age/grade groups to be served. We received no comments on this guideline and are adopting the proposed provisions as final at § 210.10(l)(4)(iii) and § 220.8(h)(3)(iii).

#### *What Was Proposed About Competitive Foods?*

For both the NSLP and SBP, Section 10(a) of the CNA (42 U.S.C. 1779(a)) requires regulations “. . . relating to the service of food . . . in competition with the (school meals) programs. . . .” To implement this provision, § 210.11(b) and § 220.12(a) prohibit the sale of “foods of minimal nutritional value” in the cafeteria area during the service of lunch or breakfast. Appendix B to each of these parts lists the foods considered

to be foods of minimal nutritional value. Any alternate approach may not alter this statutory provision and the implementing regulations. We received no comments on this proposed guideline, so it is adopted as final without change at § 210.10(l)(4)(iv) and § 220.8(h)(3)(iv) for the lunch and breakfast programs, respectively.

#### *What Was Proposed About Determining How Various Foods Count Towards the Meal Pattern Under the Food-Based Alternate Menu Planning Approaches?*

We proposed that the current provisions on how foods are counted towards meeting the meal pattern requirements (found in § 210.10 and § 220.8, the appendices to Parts 210 and 220 and FNS instructions and guidance) apply to alternate menu planning approaches that were food-based (as opposed to nutrient analysis-based approaches) in design. Our standards on counting food items maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component to count toward meeting the meal requirements.

We received five comments on applying the policies on how foods are counted towards the meal patterns to alternate menu planning approaches. Four of the comments opposed it while one supported it. One commentator felt that policies on counting foods towards meeting the meal patterns do not ensure the nutritional integrity of meals. Another commentator felt we should allow for alternate means for counting foods towards the meal patterns to encourage experimentation.

We continue to believe that our policies on how foods are counted towards the meal patterns are needed to support use of appropriate food products in the school meals programs and to provide schools with guidance on how different food items meet all or part of the various food components. We have kept our guidance to a minimum, usually relying on the standards of identity established by other Federal agencies. Given the relatively small number of comments and the rationale for our current guidance, we are adopting, as final without changes, the proposed provision requiring that the policies on counting foods towards the meal patterns be followed for alternate menu planning approaches. These provisions are found at § 210.10(l)(4)(v) and § 220.8(h)(3)(v).

### *Did Anyone Comment on Vegetable Protein Products?*

Eight commentors wanted us to reconsider our requirements on vegetable protein products in the NSLP and SBP. Since publication of this proposed rule on alternate menu planning approaches, we issued both a proposed (64 FR 38839; July 20, 1999) and final rule (65 FR 12429 March 9, 2000) on the use of VPP in the child nutrition programs. Please refer to these publications for information on this issue.

### *What Was Proposed About How To Identify a Reimbursable Lunch or Breakfast?*

Our regulations currently define what must be contained in a reimbursable lunch or breakfast for the four menu planning approaches. (For additional information about what constitutes a reimbursable lunch or breakfast under the various approaches, please refer to 7 CFR 210.10 for the lunch program and 7 CFR 220.8 for the breakfast program.)

We proposed that an alternate menu planning approach should meet the existing food component and food item or menu item requirements for reimbursable lunches or breakfasts to the extent possible. However, if the existing procedures are modified, we proposed that the State agency or SFA detail what food components/food items or menu items constitute a reimbursable lunch or breakfast under the alternate menu planning approach. The alternate approach must describe the number of items and the types of items (and if applicable, the quantities for each item) and how a reimbursable lunch or breakfast is identified at the point of service by the children, the cashiers, and reviewers. We received no comments on this guideline. Therefore, the proposals are adopted as final at § 210.10(l)(4)(vi) and § 220.8(h)(3)(vi), respectively, for the school lunch and breakfast programs.

### *What Was Proposed About Monitoring Alternate Approaches?*

Our regulations establish methods for determining if schools are meeting the administrative requirements for the school lunch or breakfast programs and for assessing compliance with the nutrition standards. One guideline proposed for alternate approaches addressed monitoring. This is needed because the State agency must be able to determine if reimbursable lunches are being offered, accepted, and properly counted and if the lunch service is in compliance with all of the nutrition and administrative standards. In the large

majority of cases, alternate menu planning approaches probably can be monitored within the existing criteria for both coordinated review effort (CRE) and assessments of how schools are meeting the nutrition standards.

However, in some cases, the proposed alternate approach may not lend itself to the established nutrition assessment methods. In a nutrition assessment, the State agency reviews the school's nutrient analysis or conducts a nutrient analysis for those schools that use a food-based menu planning approach. Therefore, any alternate approach must indicate if it can be monitored under the existing criteria. If not, the alternate approach must include a method for the State agency's assessment. We anticipate that this will primarily involve a description of the records that schools maintain to document compliance with administrative and nutrition requirements.

We received only one comment on this guideline. The commentor stated that the school should not develop any monitoring criteria; rather, the State agency should do it. We reiterate that most alternate approaches will lend themselves to the existing monitoring procedures. The only time an SFA would need to address monitoring in the design of the alternate menu planning approach would be to indicate what differences there were in the structure of a reimbursable lunch and the like. The SFA would also need to indicate where and how the State agency would find the needed information to determine compliance with the nutrition standards. The SFA would not need to outline a monitoring system for the State agency to follow; rather, it would show differences between the existing menu planning approaches and their alternate approach and ways to assist the State agency with either using or adapting the standard monitoring procedures. Therefore, we are adopting this guideline as proposed without any changes. These provisions are found at § 210.10(l)(4)(vii) and § 220.8(h)(3)(vii) with conforming amendments at § 210.19(a).

### *What Was Proposed About Using Weighted Averages for Alternate Menu Planning Approaches Based on Nutrient Standard Menu Planning?*

We proposed that alternate menu planning approaches using nutrient analysis have the analysis conducted based on weighting of all foods planned to be offered as part of the reimbursable lunch or breakfast based on planned production except for certain alternate approaches developed by State agencies. However, subsequent to issuing the

proposed rule, Pub. L. 105-336, the Child Nutrition Reauthorization Act of 1998 was enacted. Section 102(b) of that law (42 U.S.C.1758(f)(4)(B)) prohibits the Department from requiring use of weighting until September 30, 2003. One commentor noted that the requirement for weighting was in violation of Pub. L. 105-336. In total, only three comment letters addressed this guideline. All of them opposed requiring this guideline. Weighting proportionately accounts for the popularity of the various foods and menu items offered.

We are amending the regulations to clarify that schools are *not* required to conduct a weighted nutrient analysis through September 30, 2003. Therefore, when either SFAs or State agencies conduct a nutrient analysis for any reason, weighting cannot be required by FNS. We are adding that date to the requirements (at § 210.10(l)(4)(viii) and § 220.8(h)(3)(viii)) on weighted averages under alternate menu planning approaches. Except for adding the date, the proposed provisions are adopted, as final. We are also adding the date at § 210.10(i)(5)(i) and § 220.8(e)(5)(i) which provide the requirements for the nutrient standard menu planning approach.

In the preamble to the proposed regulation, we requested comments on the use of a weighted nutrient analysis versus an unweighted method. We received 27 comments on this issue with eight commentors supporting the use of weighted averages and 19 opposing some aspect of weighted averages. As mentioned earlier, the provision on weighting is temporarily suspended. While we believe that weighted averages may be one method to reflect what students actually select (which then results in more accurate nutrient analysis), we are continuing to assess the accuracy of both weighted and unweighted averages as indicators of how well the nutrition standards are met.

### *What Was Proposed About the Use of Approved Software for Alternate Approaches That Used Nutrient Analysis?*

We also proposed that alternate approaches use FNS approved software as required by §§ 210.10(i)(4) and 220.8(e)(4). Software used for nutrient analysis of school lunches and breakfasts must meet the minimum requirements established by FNS and must incorporate the Child Nutrition Database. Approved software is designed to meet the needs of school food service professionals and fulfills two essential criteria—the ability to

perform all the requirements of the regulations and the achievement of uniform results. However, we did propose to permit modification of this criterion if an alternate menu planning approach was developed by the State agency which would remain an active partner and was adopted by five or more SFAs.

We received five comments on this provision, all in opposition. We continue to believe that the use of approved software is vital to the nutritional integrity of the programs and that use of approved software (except in very limited circumstances) assures that it meets the regulatory requirements. Also, there are a number of approved software packages available which schools can select depending on their specific needs. In those limited situations where schools using an alternate menu planning approach would not be required to use approved software, the State agency would be available to provide a continual source of guidance and expertise to assist schools. Therefore, we are adopting this guideline as proposed without changes at § 210.10(l)(4)(viii) and § 220.8(h)(3)(viii).

#### *What Clarifications Were Proposed About Assessing Compliance With the Nutrition Standards?*

We proposed amendments to § 210.18 and § 210.19 to clarify that the existing monitoring requirements apply to the traditional food-based menu planning approach. We also proposed some technical amendments to modify the terminology in § 210.18 and § 210.19. These changes clarify that these assessment and monitoring requirements apply to all menu planning approaches, including alternate approaches developed by State agencies or SFAs. We had no comments on these changes. Therefore, the amendments to § 210.18(b)(2)(ii), (g)(2), and (i)(3)(ii) and to § 210.19(c)(6)(i) are adopted as final without changes.

#### *What Was Proposed About Adjusting the Week Selected for the Nutrition Assessment?*

We proposed an adjustment to the period of the nutrition assessments to provide State agencies additional flexibility in choosing a week to evaluate. Currently, paragraphs (a)(1)(i) and (ii) of § 210.19 stipulate that the State agency must review the school's nutrition analysis or conduct an independent analysis for the last completed week prior to the assessment. However, some State agencies told us that for the administrative/CRE review under § 210.18, they can select the

month prior to the month of the review as the sample period. Consequently, State agencies which elect to conduct nutrition assessments concurrently with CRE reviews will likely need to look at two different review periods during the same visit. To remedy this situation, we proposed that reviewers could conduct the nutrition standard assessment on any week of the current school year prior to the month of the review as long as that week still represented the current lunch or breakfast service.

We received 9 comments on this proposal, all but one of them supported the change. One commentor suggested that we delete the wording about a week "prior to" to the month in which the assessment is conducted. The commentor felt this limited the reviewer if s/he wanted to select a week in the month of the review. We are adopting this recommendation to provide reviewers with additional flexibility. We are making this modification to § 210.19(a)(1)(i) but are otherwise adopting as final the changes as proposed to this paragraph.

#### *What Was Proposed About the Extent of Assessments?*

We proposed that State agencies must review at least one school for each type of menu planning used by the SFA. We also clarified that State agencies would only need to do a nutrition assessment on the lunch program unless the SFA uses a particular menu planning approach only for the breakfast program or only participates in the SBP. We received no comments on these proposed changes, so they are adopted at § 210.19(a)(1) as final without change.

#### *What Was Proposed About Conforming the CRE and Nutrition Assessment Cycles?*

We proposed a minor technical amendment to § 210.19(a)(1)(i) to make the cycle for nutrition assessments consistent with the cycle for administrative reviews under § 210.18. Originally, we established a five-year cycle for assessments of nutrition compliance and intended that cycle to run concurrently with the CRE cycle so that those States electing to conduct nutrition assessments at the same time as administrative reviews could do so efficiently. That first cycle began on July 1, 1996, unless the State agency authorized a temporary waiver of compliance with the nutrition standards, in which case the first year of the cycle could have begun as late as July 1, 1998. Consequently, the first five-year cycle would end as early as June 30, 2001 or as late as June 30, 2003, depending upon actual implementation.

The current CRE cycle ends on June 30, 1998, however, and the next cycle will end on June 30, 2003. The two cycles are then out of sequence for State agencies which implement the regulations before School Year 1998/1999. We proposed a schedule to have the two cycles coincide by establishing an initial cycle of seven years for nutrition assessments, from July 1, 1996 through June 30, 2003. Thereafter, the cycles would be five years in length. We received 13 comments on this proposed provision, all but one of which supported the change. Therefore, we are adopting this proposal without change at § 210.19(a)(1)(i).

#### *What Technical Changes Were Proposed?*

We proposed to update references to the 1990 Dietary Guidelines for Americans to reflect the 1995 edition as well as the minor word changes between the two versions. We received no comments on these changes, so they are adopted as final at § 210.10(b) and § 220.8(a) and to the footnotes for the tables in §§ 210.10(c), 210.10(d), 220.8(b), and 220.8(c).

We proposed to revise the name of the database used in the nutrient analysis software from the "National Nutrient Database for the Child Nutrition Programs" to the "Child Nutrition Database." We received no comments on this and are adopting it as final at § 210.10(i) and § 220.8(e). We are also deleting obsolete sections of §§ 210.10 and 220.8 (paragraphs (o) and (m), respectively) as these refer to implementation deadlines that have passed. Sections 210.10a and 220.8a are also deleted as the pertinent provisions are now incorporated into §§ 210.10 and 220.8. As we received no comments on these technical changes, they are all adopted as final without change.

Please keep in mind, however, that we did rewrite most of §§ 210.10 and 220.8 in plain language. We may have reworded some of the proposed changes for simplicity. We also conformed the language for the traditional food-based menu planning approach to the terms used in the enhanced food-based menu planning approach. We did not intentionally revise the content of the proposed or existing regulations. Please note that we did not include the section on supplemental foods (§ 210.10(n)) as this section is being rewritten as a separate rulemaking to incorporate the recent expansion of the afterschool snack service. However, in the interests of plain language and in anticipation of the regulations that will incorporate the term, this regulation uses "afterschool snack" in lieu of "meal supplement"

(the currently used term) and clarifies where requirements apply only to lunches and breakfasts and those that apply to all of the meal services including the afterschool snack service.

*Does This Final Rule Include Any Additional Technical Changes?*

Yes. This final rule designates a previously undesignated paragraph in § 210.18(i)(3)(i). This is only a technical amendment to conform our regulations to the formatting requirements of the Office of the Federal Register.

**Executive Order 12866**

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Public Law 104-4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory approaches and adopt the least costly, more cost-effective or least burdensome that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of \$100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Regulatory Flexibility Act**

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools as this rule expands the number of approaches available to plan menus for school lunches and breakfasts.

**Executive Order 12372**

The NSLP and the SBP are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the NSLP and SBP, the administrative procedures are set forth under the following regulations: (1) SFA appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) SFA appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the information reporting and recordkeeping requirements included in this final rule were reviewed by the Office of Management and Budget (OMB). OMB approved these requirements for part 210 under control number 0584-0006.

**List of Subjects**

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grant programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

**PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

1. The authority citation for 7 CFR part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751-1760, 1779.

2. In part 210, the words "or § 210.10a, whichever is applicable" are removed wherever they appear in the following places:

- a. § 210.9(b)(5);
- b. § 210.9(c)(1);
- c. § 210.16(b)(1);
- d. § 210.19(a)(3);
- e. Appendix A to Part 210; and
- f. Appendix C to Part 210.

3. In part 210, the words "or § 210.10a(b), whichever is applicable" are removed wherever they appear in the following places:

- a. § 210.7(c)(1)(v); and
- b. § 210.15(b)(3).

4. In part 210, the words "or § 210.10a(j)(1), whichever is applicable" are removed wherever they appear in the following places:

- a. § 210.4(b)(3);
- b. § 210.7(d); and
- c. § 210.9(c), introductory text.

**§ 210.2 [Amended].**

- 4. In § 210.2:
  - a. The definition of "*Food component*" is revised;
  - b. The definition of "*Food item*" is revised;
  - c. The definition of "*Lunch*" is revised; and
  - d. The definition of "*Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning*" is revised.

The revisions read as follows:

**§ 210.2 Definitions.**

\* \* \* \* \*

*Food component* means one of the four food groups which comprise reimbursable meals planned under a food-based menu planning approach. The four food components are: meat/meat alternate; grains/breads; fruits/vegetables; and milk.

*Food item* means one of the five foods offered in lunches under a food-based menu planning approach: meat/meat alternate; grains/breads; two servings of fruits/vegetables; and milk.

*Lunch* means a meal service that meets the applicable nutrition standards

and portion sizes in § 210.10 for lunches.

\* \* \* \* \*

*Nutrient Standard Menu Planning/ Assisted Nutrient Standard Menu Planning* means ways to develop lunch menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met in accordance with § 210.10(i)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, lunch menu planning and analysis are completed by other entities and must incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority in accordance with § 210.10(j).

\* \* \* \* \*

5. In § 210.10:

- a. Paragraph (o) is removed;
  - b. Paragraphs (a) through (k) are revised;
  - c. Paragraphs (l) and (m) are redesignated as paragraphs (m) and (o), respectively, and are revised; and
  - d. A new paragraph (l) is added.
- The revisions and additions read as follows:

**§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?**

(a) *What are the general requirements?*

(1) *General nutrition requirements.* Schools must provide nutritious and well-balanced meals to all the children they serve.

(i) *Requirements for lunch.* For children age 2 or older, schools must offer lunches that meet, at a minimum, the nutrition standards in paragraph (b) of this section. Compliance with the nutrition standards and the appropriate nutrient and calorie levels is determined by averaging lunches planned to be offered over a school week. Under any menu planning approach, schools must plan and produce at least enough food to meet the appropriate calorie and nutrient levels for the ages/grades of the children in the school (see paragraphs (c), (d), (i)(1) or (l) of this section, depending on the menu planning approach used). Also, if schools use one of the food-based menu planning approaches, they must plan and produce at least enough food to offer each child the minimum quantities under the meal pattern (see paragraph (k) of this section). Schools offering lunches to infants must meet the meal

pattern requirements in paragraph (o) of this section.

(ii) *Requirements for afterschool snacks.* Schools offering afterschool snacks in afterschool care programs must meet the meal pattern requirements in paragraph (n) of this section. Schools must plan and produce enough food to offer each child the minimum quantities under the meal pattern in paragraph (n) of this section. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 226 of this chapter also apply to afterschool snacks served in accordance with paragraph (n) of this section.

(2) *Unit pricing.* Schools must price each meal as a unit. Schools need to consider participation trends in an effort to provide one reimbursable lunch and, if applicable, one reimbursable afterschool snack for each child every day. If there are leftover meals, schools may offer them to the students but cannot get reimbursement for them.

(3) *Production and menu records.* Schools must keep production and menu records for the meals they produce. These records must show how the meals contribute to the required food components, food items or menu items every day. In addition, for lunches, these records must show how the lunches contribute to the nutrition standards in paragraph (b) of this section and the appropriate calorie and nutrient levels for the ages/grades of the children in the school (see paragraphs (c), (d), or (i)(1) or (l) of this section, depending on the menu planning approach used) over the school week. If applicable, schools or school food authorities must maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week:

- (i) The nutrition standards provided in paragraph (b) of this section; and
- (ii) The nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (c) or (i)(1) of this section or developed under paragraph (l) of this section.

(b) *What are the specific nutrition standards for lunches?* Children age 2 and above must be offered lunches that meet the following nutrition standards for their age/grade group:

(1) Provision of one-third of the Recommended Dietary Allowances (RDAs) for protein, calcium, iron, vitamin A and vitamin C in the appropriate levels for the ages/grades (see paragraphs (c), (d), (i)(1) or (l) of

this section, depending on the menu planning approach used);

(2) Provision of the lunchtime energy allowances (calories) in the appropriate levels (see paragraphs (c), (d), (i)(1) or (l) of this section, depending on the menu planning approach used);

(3) These applicable recommendations from the 1995 Dietary Guidelines for Americans:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of total calories;
- (iii) Limit saturated fat to less than 10 percent of total calories;
- (iv) Choose a diet low in cholesterol;
- (v) Choose a diet with plenty of grain products, vegetables, and fruits; and
- (vi) Choose a diet moderate in salt and sodium.

(4) These measures of compliance with the applicable recommendations of the 1995 Dietary Guidelines for Americans:

- (i) Limit the percent of calories from total fat to 30 percent of the actual number of calories offered;
- (ii) Limit the percent of calories from saturated fat to less than 10 percent of the actual number of calories offered;
- (iii) Reduce sodium and cholesterol levels; and
- (iv) Increase the level of dietary fiber.

(5) School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that lunches must offer depends on the menu planning approach used and the ages/grades served. The menu planning approaches are:

- (i) Nutrient standard menu planning (see paragraphs (c) and (i) of this section);
- (ii) Assisted nutrient standard menu planning (see paragraphs (c) and (j) of this section);

(iii) Traditional food-based menu planning (see paragraphs (d)(1) and (k) of this section);

(iv) Enhanced food-based menu planning (see paragraphs (d)(2) and (k) of this section); or

(v) Alternate menu planning (see paragraph (l) of this section).

(c) *What are the levels for nutrients and calories for lunches planned under the nutrient standard or assisted nutrient standard menu planning approaches?*

(1) *Required levels.* The required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	MINIMUM REQUIREMENTS			OPTIONAL
	Preschool	Grades K-6	Grades 7-12	Grades K-3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	1	1, 2	2	1, 2
Saturated fat (as a percentage of actual total food energy)	1	1, 3	3	1, 3
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

<sup>1</sup> The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week

<sup>3</sup> Less than 10 percent over a school week

(2) *Optional levels.* Optional levels are:

OPTIONAL MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	AGES 3-6	AGES 7-10	AGES 11-13	AGES 14 AND ABOVE
Energy allowances (calories)	558	667	783	846
Total fat (as a percentage of actual total food energy)	1,2	2	2	2
Saturated fat (as a percentage of actual total food energy)	1,3	3	3	3
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for Vitamin A (RE)	158	233	300	300
RDA for Vitamin C (mg)	14.6	15	16.7	19.2

<sup>1</sup> The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week

<sup>3</sup> Less than 10 percent over a school week

(3) *Customized levels.* Schools may also develop a set of nutrient and calorie levels for a school week. These levels are customized for the age groups of the

children in the particular school or school food authority.

(d) *What are the nutrient and calorie levels for lunches planned under the food-based menu planning approaches?*

(1) *Traditional approach.* For the traditional food-based menu planning approach, the required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	MINIMUM REQUIREMENTS			OPTIONAL
	Preschool	Grades K-6	Grades 7-12	Grades K-3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	1	1, 2	2	1, 2
Saturated fat (as a percentage of actual total food energy)	1	1, 3	3	1, 3
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

<sup>1</sup> The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week

<sup>3</sup> Less than 10 percent over a school week

(2) *Enhanced approach.* For the enhanced food-based menu planning approach, the required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES ENHANCED FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	MINIMUM REQUIREMENTS			OPTIONAL
	PRESCHOOL	GRADES K-6	GRADES 7-12	GRADES K-3
Energy allowances (calories)	517	664	825	633
Total fat (as a percentage of actual total food energy)	1	1, 2	2	1, 2
Saturated fat (as a percentage of actual total food energy)	1	1, 3	3	1, 3
RDA for protein (g)	7	10	16	9
RDA for calcium (mg)	267	286	400	267
RDA for iron (mg)	3.3	3.5	4.5	3.3
RDA for Vitamin A (RE)	150	224	300	200
RDA for Vitamin C (mg)	14	15	18	15

<sup>1</sup> The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week

<sup>3</sup> Less than 10 percent over a school week

(e) *Must schools offer choices at lunch?* FNS encourages schools to offer children a selection of foods and menu items at lunch. Choices provide variety and encourage consumption. Schools may offer choices of reimbursable lunches or foods within a reimbursable lunch. Children who are eligible for free or reduced price lunches must be allowed to take any reimbursable lunch or any choices offered as part of a reimbursable lunch. Schools may establish different unit prices for each lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(f) *What are the requirements for lunch periods?*

(1) *Timing.* Schools must offer lunches meeting the requirements of

this section during the period the school has designated as the lunch period. Schools must offer lunches between 10:00 a.m. and 2:00 p.m. Schools may request an exemption from these times only from FNS.

(2) *Lunch periods for young children.* With State agency approval, schools are encouraged to serve children ages one through five over two service periods. Schools may divide the quantities and/or the menu items, foods, or food items offered each time any way they wish.

(3) *Adequate lunch periods.* FNS encourages schools to provide sufficient lunch periods that are long enough to give all students enough time to be served and to eat their lunches.

(g) *What exceptions and variations are allowed in meals?*

(1) *Exceptions for medical or special dietary needs.* Schools must make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement must, in the case of a student with a disability, be signed by a physician or, in the case of a

student who is not disabled, by a recognized medical authority.

(2) *Variations for ethnic, religious, or economic reasons.* Schools should consider ethnic and religious preferences when planning and preparing meals. Variations on an experimental or continuing basis in the food components for the food-based menu planning approaches in paragraphs (k) or (n) of this section may be allowed by FNS. Any variations must be nutritionally sound and needed to meet ethnic, religious, or economic needs.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve meals for reimbursement that do not meet the requirements in this section.

(h) *What should schools do about nutrition disclosure?* FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards (see paragraph (b) of this section) for school lunches.

(i) *What are the requirements for lunches under the nutrient standard menu planning approach?*

(1) *Nutrient levels.*

(i) *Adjusting nutrient levels for young children.* Schools with children who are age 2 must at least meet the nutrition standards in paragraph (b) of this section and the preschool nutrient and calorie levels in paragraph (c)(1) of this section over a school week. Schools may also use the preschool nutrient and calorie levels in paragraph (c)(2) of this section or may calculate nutrient and calorie levels for two year olds. FNS has a method for calculating these levels in guidance materials for menu planning.

(ii) *Minimum levels for nutrients.* Lunches must at least offer the nutrient and calorie levels for the required grade groups in the table in paragraph (c)(1) of this section. Schools may also offer lunches meeting the nutrient and calorie levels for the age groups in paragraph (c)(2) of this section. If only one grade or age group is outside either of these established levels, schools may follow the levels for the majority of the children. Schools may also customize the nutrient and calorie levels for the children they serve. FNS has a method for calculating these levels in guidance materials for menu planning.

(2) *Reimbursable lunches.*

(i) *Contents of a reimbursable lunch.* A reimbursable lunch must include at least three menu items. One of those menu items must be an entree, and one must be fluid milk as a beverage. An entree is a combination of foods or is a single food item offered as the main

course. All menu items or foods offered in a reimbursable lunch contribute to the nutrition standards in paragraph (b) of this section and to the levels of nutrients and calories that must be met in paragraphs (c) or (i)(1) of this section. Unless offered as part of a menu item in a reimbursable lunch, foods of minimal nutritional value (see appendix B to part 210) are not included in the nutrient analysis. Reimbursable lunches planned under the nutrient standard menu planning approach must meet the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in either paragraph (c) or paragraph (i)(1) of this section.

(ii) *Offer versus serve.* Schools must offer at least three menu items for lunches. Senior high (as defined by the State educational agency) school students must select at least two menu items and are allowed to decline a maximum of two menu items. The student must always take the entree. The price of a reimbursable lunch does not change if the student does not take a menu item or requests smaller portions. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve.

(3) *Doing the analysis.* Schools using nutrient standard menu planning must conduct the analysis on all menu items and foods offered in a reimbursable lunch. The analysis is conducted over a school week. Unless offered as part of a menu item in a reimbursable lunch, foods of minimal nutritional value (see appendix B to part 210) are not included in the nutrient analysis.

(4) *Software elements.*

(i) *The Child Nutrition Database.* The nutrient analysis is based on the Child Nutrition Database. This database is part of the software used to do a nutrient analysis. Software companies or others developing systems for schools may contact FNS for more information about the database.

(ii) *Software evaluation.* FNS or an FNS designee evaluates any nutrient analysis software before it may be used in schools. FNS or its designee determines if the software, as submitted, meets the minimum requirements. The approval of software does not mean that FNS or USDA endorses it. The software must be able to do all functions after the basic data is entered. The required functions include weighted averages and the optional combined analysis of the lunch and breakfast programs.

(5) *Nutrient analysis procedures.*

(i) *Weighted averages.* Schools must include all menu items and foods offered in reimbursable lunches in the nutrient analysis. Menu items and foods

are included based on the portion sizes and projected serving amounts. They are also weighted based on their proportionate contribution to the lunches offered. This means that menu items or foods more frequently offered are weighted more heavily than those not offered as frequently. Schools calculate weighting as indicated by FNS guidance and by the guidance provided by the software. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(ii) *Analyzed nutrients.* The analysis includes all menu items and foods offered over a school week. The analysis must determine the levels of: Calories, protein, vitamin A, vitamin C, iron, calcium, total fat, saturated fat, sodium, cholesterol and dietary fiber.

(iii) *Combining the analysis of the lunch and breakfast programs.* At their option, schools may combine the analysis of lunches offered under this part and breakfasts offered under part 220 of this Chapter. The analysis is done proportionately to the levels of participation in each program based on FNS guidance.

(6) *Comparing the results of the nutrient analysis.* Once the procedures in paragraph (i)(5) of this section are completed, schools must compare the results of the analysis to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (c) of this section or those developed under paragraph (i)(1) of this section. This comparison determines the school week's average. Schools must also make comparisons to the nutrition standards in paragraph (b) of this section to determine how well they are meeting the nutrition standards over the school week.

(7) *Adjustments to the menus.* Once schools know the results of the nutrient analysis based on the procedures in paragraphs (i)(5) and (i)(6) of this section, they must adjust future menu cycles to reflect production and how often the menu items and foods are offered. Schools may need to reanalyze menus when the students' selections change and, consequently, production levels change. Schools may need to change the menu items and foods offered given the students' selections and may need to modify the recipes and other specifications to make sure that the nutrition standards in paragraph (b) and either paragraphs (c) or (i)(1) of this section are met.

(8) *Standardized recipes.* If a school follows the nutrient standard menu planning approach, it must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients

for both measurement and preparation methods. Any standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they must be standardized and analyzed to determine the levels of calories, nutrients, and dietary components listed in paragraph (i)(5)(ii) of this section. Schools must add any local recipes to their local database as outlined in FNS guidance.

(9) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods and menu items that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods and menu items to their local database as outlined in FNS guidance. Schools or the State agency must obtain the levels of calories, nutrients, and dietary components listed in paragraph (i)(5)(ii) of this section.

(10) *Menu substitutions.* Schools may need to substitute foods or menu items in a menu that was already analyzed. If the substitution(s) occurs more than two weeks before the planned menu is served, the school must reanalyze the revised menu. If the substitution(s) occurs two weeks or less before the planned menu is served, the school does not need to do a reanalysis. However, schools should always try to substitute similar foods.

(11) *Meeting the nutrition standards.* The school's analysis shows whether their menus are meeting the nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraph (c) of this section or customized levels developed under paragraph (i)(1) of this section. If the analysis shows that the menu(s) are not meeting these standards, the school needs to take action to make sure that the lunches meet the nutrition standards and the calorie, nutrient, and dietary component levels. Actions may include technical assistance and training and may be taken by the State agency, the school food authority or by the school as needed.

(12) *Other Child Nutrition Programs and nutrient standard menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare lunches for these

programs using the nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult lunches under the Child and Adult Care Food Program. However, afterschool snacks continue to use the appropriate program's meal pattern.

(j) *What are the requirements for lunches under the assisted nutrient standard menu planning approach?* (1) *Definition of assisted nutrient standard menu planning.* Some school food authorities may not be able to do all of the procedures necessary for nutrient standard menu planning. The assisted nutrient standard menu planning approach provides schools with menu cycles developed and analyzed by other sources. These sources include the State agency, other school food authorities, consultants, or food service management companies.

(2) *Elements of assisted nutrient standard menu planning.* School food authorities using menu cycles developed under assisted nutrient standard menu planning must follow the procedures in paragraphs (i)(1) through (i)(10) of this section. The menu cycles must also incorporate local food preferences and accommodate local food service operations. The menu cycles must meet the nutrition standards in paragraph (b) of this section and meet the nutrient and calorie levels for nutrient standard menu planning in paragraph (c) or paragraph (i)(1) of this section. The supplier of the assisted nutrient standard menu planning approach must also develop and provide recipes, food product specifications, and preparation techniques. All of these components support the nutrient analysis results of the menu cycles used by the receiving school food authorities.

(3) *State agency approval.* Prior to its use, the State agency must approve the initial menu cycle, recipes and other specifications of the assisted nutrient standard menu planning approach. The State agency needs to ensure that all the steps required for nutrient analysis were followed. School food authorities may also ask the State agency for assistance with implementation of their assisted nutrient standard menu planning approach.

(4) *Required adjustments.* After the initial service of the menu cycle developed under the assisted nutrient standard menu planning approach, the

nutrient analysis must be reassessed and appropriate adjustments made as discussed in paragraph (i)(7) of this section.

(5) *Final responsibility for meeting the nutrition standards.* The school food authority using the assisted nutrient standard menu planning approach retains responsibility for meeting the nutrition standards in paragraph (b) of this section and the calorie and nutrient levels in paragraph (c) or paragraph (i)(1) of this section.

(6) *Adjustments to the menus.* If the nutrient analysis shows that the lunches offered are not meeting the nutrition standards in paragraph (b) of this section and the calorie and nutrient levels in paragraph (c) or paragraph (i)(1) of this section, the State agency, school food authority or school must take action to make sure the lunches offered meet these requirements. Actions needed include technical assistance and training.

(7) *Other Child Nutrition Programs and assisted nutrient standard menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare lunches for these programs using the assisted nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult lunches under the Child and Adult Care Food Program. However, afterschool snacks continue to use the appropriate program's meal pattern.

(k) *What are the requirements for lunches under the food-based menu planning approaches?* There are two menu planning approaches based on meal patterns, not nutrient analysis. These approaches are the traditional food-based menu planning approach and the enhanced food-based menu planning approach. Schools using one of these approaches offer food components in at least the minimum quantities required for the various grade groups.

(1) *Quantities for the traditional food-based menu planning approach.* (i) *Minimum quantities.* At a minimum, schools must offer five food items in the quantities in the following table:

TRADITIONAL FOOD-BASED MENU PLANNING APPROACH—MEAL PATTERN FOR LUNCHES					
MINIMUM QUANTITIES					RECOMMENDED QUANTITIES
FOOD COMPONENTS AND FOOD ITEMS	GROUP I AGES 1-2 PRESCHOOL	GROUP II AGES 3-4 PRESCHOOL	GROUP III, AGES 5-8 GRADES K-3	GROUP IV AGES 9 AND OLDER GRADES 4-12	GROUP V AGES 12 AND OLDER GRADES 7-12
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1 ½ ounces	1 ½ ounces	2 ounces	3 ounces
Alternate Protein Products <sup>1</sup>	1 ounce	1 ½ ounces	1 ½ ounces	2 ounces	3 ounces
Cheese	1 ounce	1 ½ ounces	1 ½ ounces	2 ounces	3 ounces
Large egg	½	¾	¾	1	1 ½
Cooked dry beans or peas	¼ cup	3/8 cup	3/8 cup	½ cup	¾ cup
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	3 tablespoons	4 tablespoons	6 tablespoons
Yogurt, plain or flavored, unsweetened or sweetened	4 ounces or ½ cup	6 ounces or ¾ cup	6 ounces or ¾ cup	8 ounces or 1 cup	12 ounces or 1 ½ cups
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish)	½ ounce = 50%	¾ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1 ½ ounces = 50%
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both	½ cup	½ cup	½ cup	¾ cup	¾ cup
Grains/Breads: (servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains	5 servings per week <sup>2</sup> -- minimum of ½ serving per day	8 servings per week <sup>2</sup> -- minimum of 1 serving per day	8 servings per week <sup>2</sup> -- minimum of 1 serving per day	8 servings per week <sup>2</sup> -- minimum of 1 serving per day	10 servings per week <sup>2</sup> -- minimum of 1 serving per day

<sup>1</sup> Must meet the requirements in appendix A of this part.

<sup>2</sup> For the purposes of this table, a week equals five days.

(ii) *Use of Group IV quantities.* Schools that are able to provide quantities of food to children solely on the basis of their ages or grade level should do so. Schools that cannot serve children on the basis of age or grade level must provide all school age children Group IV portions as specified in the table in paragraph (k)(1)(i) of this section. Schools serving children on the basis of age or grade level must plan and produce sufficient quantities of food to provide Groups I-IV no less than the amounts specified for those children in

the table in paragraph (k)(1)(i) of this section, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. FNS recommends that schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table in paragraph (k)(1)(i) of this section. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the food items; however, schools must plan and produce

sufficient quantities of food to at least provide the serving sizes required for Group IV. Schools must ensure that lunches are served with the objective of providing the per lunch minimums for each age and grade level as specified in the table in paragraph (k)(1)(i) of this section.

(2) *Quantities for the enhanced food-based menu planning approach.* Schools must at least offer five food items in the quantities in the following table:

ENHANCED FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR LUNCHES					
FOOD COMPONENTS AND FOOD ITEMS	MINIMUM REQUIREMENTS				OPTION FOR
	AGES 1-2	PRESCHOOL	GRADES K-6	GRADES 7-12	GRADES K-3
Milk (as a beverage)	6 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces	8 fluid ounces
Meat or Meat Alternate (quantity of the edible portion as served):					
Lean meat, poultry, or fish	1 ounce	1 ½ ounces	2 ounces	2 ounces	1 ½ ounces
Alternate protein products <sup>1</sup>	1 ounce	1 ½ ounces	2 ounces	2 ounces	1 ½ ounces
Cheese	1 ounce	1 ½ ounces	2 ounces	2 ounces	1 ½ ounces
Large egg	½	¾	1	1	¾
Cooked dry beans or peas	¼ cup	3/8 cup	½ cup	½ cup	3/8 cup
Peanut butter or other nut or seed butters	2 tablespoons	3 tablespoons	4 tablespoons	4 tablespoons	3 tablespoons
Yogurt, plain or flavored, unsweetened or sweetened	4 ounces or ½ cup	6 ounces or ¾ cup	8 ounces or 1 cup	8 ounces or 1 cup	6 ounces or ¾ cup
The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above:					
Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds equals 1 ounce of cooked lean meat, poultry or fish).	½ ounce = 50%	¾ ounce = 50%	1 ounce = 50%	1 ounce = 50%	¾ ounce = 50%
Vegetable or Fruit: 2 or more servings of vegetables, fruits or both	½ cup	½ cup	¾ cup plus an extra ½ cup over a week <sup>2</sup>	1 cup	¾ cup
Grains/Breads (servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains	5 servings per week <sup>2</sup> – minimum of ½ serving per day	8 servings per week <sup>2</sup> – minimum of 1 serving per day	12 servings per week <sup>2</sup> – minimum of 1 serving per day <sup>3</sup>	15 servings per week <sup>2</sup> – minimum of 1 serving per day <sup>3</sup>	10 servings per week <sup>2</sup> – minimum of 1 serving per day <sup>3</sup>

<sup>1</sup> Must meet the requirements in appendix A of this part.

<sup>2</sup> For the purposes of this table, a week equals five days.

<sup>3</sup> Up to one grains/breads serving per day may be a dessert.

(3) *Requirements for the meat/meat alternate component.* The quantity of the meat/meat alternate component must be the edible portion as served. If the portion size of a food item for this component is excessive, the school must reduce that portion and supplement it with another meat/meat alternate to meet the full requirement. This component must be served in a main dish or in a main dish and only one other food item. Schools without daily choices in this component should not serve any one meat alternate or form of meat (for example, ground, diced, pieces) more than three times in the same week.

(i) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to this part may be used to meet part of the meat/meat alternate requirement when used as specified in appendix A to this part. An enriched macaroni product with fortified protein as defined in appendix

A to this part may be used to meet part of the meat/meat alternate component or the grains/breads component but not as both food components in the same lunch.

(ii) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates in accordance with program guidance. Acorns, chestnuts, and coconuts must not be used because of their low protein and iron content. Nut and seed meals or flours may be used only as allowed under appendix A to this part. Nuts or seeds may be used to meet no more than one-half of the meat/meat alternate component with another meat/meat alternate to meet the full requirement.

(iii) *Yogurt.* Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt,

yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meat/meat alternate requirement.

(4) *Requirements for the vegetable/fruit component.*

(i) *General.* Full strength vegetable or fruit juice may be used to meet no more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be counted as either a vegetable or as a meat alternate but not as both in the same meal.

(ii) *Minimum quantities for the enhanced food-based menu planning.* Under the enhanced food-based menu planning approach, children in kindergarten through grade six are offered vegetables/fruits in minimum daily servings plus an additional one-half cup in any combination over a five day period.

(5) *Requirements for the grains/breads component.*

(i) *Enriched or whole grains.* All grains/breads must be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) *Daily and weekly servings.* The requirement for the grain/bread component is based on minimum daily servings plus total servings over a five day period. Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (1/5th) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (1/5th) for each day less than five. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in the Food Buying Guide for Child Nutrition Programs (PA 1331), an FNS publication.

(iii) *Minimums under the traditional food-based menu planning approach.* Schools must offer at least one-half serving of the grain/bread component to children in Group I and at least one serving to children in Groups II–V daily. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of grains/breads to children in Group I and eight servings per week to children in Groups II–V.

(iv) *Desserts under the enhanced food-based menu planning approach.* Under the enhanced food-based menu planning approach, schools may count up to one grain-based dessert per day for children in grades K–12 towards meeting the grains/breads component.

(6) *Offer versus serve.* Schools must offer all five required food items. Senior high (as defined by the State educational agency) school students may decline up to two of the five food items. At the school food authority's option, students below senior high may decline one or two of the five food items. The price of a reimbursable lunch does not change if the student does not take a menu item or requests smaller portions.

(7) *Meal pattern exceptions for outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement.

(1) *What are the requirements for lunches planned using an alternate menu planning approach?*

(1) *Definition.* Alternate menu planning approaches are those adopted or developed by school food authorities or State agencies that differ from the standard approaches established in paragraphs (i) through (k) of this

section. There are two types of alternate approaches. First, there are specific modifications provided in paragraph (l)(2) of this section. Second, there are major changes to the standard menu planning approaches or new menu planning approaches developed by school food authorities or State agencies (see paragraph (l)(3) of this section).

(2) *Use of modifications.* There are three modifications available to schools using one of the food-based menu planning approaches for lunches. State agencies may or may not require prior approval or may establish guidelines for using these modifications.

(i) *Modification to the meat/meat alternate component.* The required minimum quantities of the meat/meat alternate component in the food-based menu planning approaches may be offered as a weekly total with a one ounce (or its equivalent for certain meat alternates) minimum daily serving size. This modification does not apply if the minimum serving of meat/meat alternate is less than one ounce.

(ii) *Modification to age/grade groups under the traditional food-based menu planning approach.* Schools using the traditional food-based menu planning approach may:

(A) For children in grades K–6, use the portion sizes in Group IV in the table in paragraph (k)(1) of this section and follow the nutrient levels for children in grades K–6 in paragraphs (c)(1) and (d)(2) of this section; and/or

(B) For children in grades 7–12, use the portion sizes in Group IV in the table in paragraph (k)(1) of this section and follow the nutrient levels for children in grades 7–12 in paragraphs (c)(1) and (d)(2) of this section.

(iii) *Modification for the majority of children.* Under the traditional or enhanced food-based menu planning approaches, if only one age or grade is outside the established levels, schools may follow the levels for the majority of children for both quantities (see paragraph (k)) and the nutrition standards in paragraphs (b) and (d) of this section.

(3) *Use and approval of major changes or new alternate approaches.* Within the guidelines established for developing alternate menu planning approaches, school food authorities or State agencies may modify one of the established menu planning approaches in paragraphs (i) through (k) of this section or may develop their own menu planning approach. The alternate menu planning approach must be available in writing for review and monitoring purposes. No formal plan is required; guidance material, a handbook or protocol is sufficient. As appropriate,

the material must address how the guidelines in paragraph (l)(4) of this section are met. A State agency that develops an alternate approach that is exempt from FNS approval under paragraph (l)(3)(iii) of this section must notify FNS in writing when implementing the alternate approach.

(i) *Approval of local level approaches.* Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) *Approval of State agency approaches.* Unless exempt under paragraph (l)(3)(iii) of this section, any State agency-developed menu planning approach must have prior FNS approval.

(iii) *State agency approaches not subject to approval.* A State agency-developed menu planning approach does not need FNS approval if:

(A) Five or more school food authorities in the State use it; and

(B) The State agency maintains ongoing oversight of the operation and evaluation of the approach and makes any needed adjustments to its policies and procedures to ensure that the appropriate guidelines of paragraph (l)(4) of this section are met.

(4) *Elements for major changes or new approaches.* Any alternate menu planning approach must:

(i) Offer fluid milk, as provided in paragraph (m) of this section;

(ii) Include offer versus serve for senior high students. Alternate menu planning approaches should follow the offer versus serve procedures in paragraphs (i)(2)(ii) and (k)(6) of this section, as appropriate. If these requirements are not followed, the plan must indicate:

(A) The affected age/grade groups;

(B) The number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable lunch under offer versus serve;

(C) How such procedures will reduce plate waste; and

(D) How a reasonable level of calories and nutrients for the lunch as taken is provided;

(iii) Meet the Recommended Dietary Allowances and lunchtime energy allowances (nutrient levels) and indicate the age/grade groups served and how the nutrient levels are met for those age/grade groups;

(iv) Follow the requirements for competitive foods in § 210.11 and appendix B to this part;

(v) Follow the requirements for counting food items and products towards the meal patterns. These requirements are found in paragraphs (k)(3) through (k)(5) and paragraph (m) of this section, in appendices A through

C to this part, and in instructions and guidance issued by FNS. This only applies if the alternate approach is a food-based menu planning approach;

(vi) Identify a reimbursable lunch at the point of service;

(A) To the extent possible, the procedures provided in paragraph (i)(2)(i) of this section for the nutrient standard or assisted nutrient standard menu planning approaches or for food-based menu planning approaches provided in paragraph (k) of this section must be followed. Any instructions or guidance issued by FNS that further defines the elements of a reimbursable lunch must be followed when using the existing regulatory provisions.

(B) Any alternate approach that deviates from the provisions in paragraph (i)(2)(i) or paragraph (k) of this section must indicate what constitutes a reimbursable lunch, including the number and type of items (and, if applicable, the quantities for the items) which comprise the lunch, and how a reimbursable lunch is to be identified at the point of service;

(vii) Explain how the alternate menu planning approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, if the procedures under § 210.19 cannot be used to monitor the alternate approach, a description of procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (b)(1) through (b)(4) of this section must be included; and

(viii) Follow the requirements for weighted analysis and for approved software for nutrient standard menu planning approaches as required by paragraphs (i)(4) and (i)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (l)(3)(iii) of this section. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(m) *What are the requirements for offering milk?*

(1) *Types of milk.* (i) Under all menu planning approaches for lunches, schools must offer students fluid milk. The types of milk offered must be consistent with the types of milk consumed in the previous year. However, if a particular type of milk constituted less than one percent (1%) of the total amount of milk consumed in the previous year, a school does not

need to offer this type of milk. This does not preclude schools from offering additional types of milk.

(ii) All milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk. However, infants under 1 year of age must be served breast milk or iron-fortified infant formula. All milk must have vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards for such milk.

(2) *Inadequate milk supply.* If a school cannot get a supply of milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve meals during the emergency period with an alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of meals without fluid milk if the school uses an equivalent amount of canned milk or dry milk in the preparation of the meals. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" includes reconstituted or recombined milk, or as otherwise allowed by FNS through a written exception.

\* \* \* \* \*

(o) *What are the requirements for the infant lunch pattern?*

(1) *Definitions.* (i) Infant cereal means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants which is routinely mixed with breast milk or iron-fortified infant formula prior to consumption.

(ii) Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants. Formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems are not included in this definition. Infant formula, when served, must be in liquid state at recommended dilution.

(2) *Requirements for lunches for infants under the age of one.* Infants under 1 year of age must be served an infant lunch as specified in this paragraph (o). Foods served in the infant lunch pattern must be of a texture and

consistency appropriate for the particular age group served. Foods must be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parents in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food in the meal patterns in paragraph (o)(2)(iii) of this section must be provided to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. Either breast milk or iron-fortified infant formula must be served for the entire first year. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional ounces offered if the infant is still hungry. The infant lunch pattern must have at least each of the following components in the amounts indicated for the appropriate age group:

(i) Birth through 3 months—4 to 6 fluid ounces of breast milk or iron-fortified infant formula.

(ii) 4 through 7 months:

(A) 4 to 8 fluid ounces of breast milk or iron-fortified infant formula;

(B) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and

(C) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(iii) 8 through 11 months:

(A) 6 to 8 fluid ounces of breast milk or iron-fortified infant formula;

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas, or 1/2 to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

(C) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

LUNCH PATTERN FOR INFANTS

	Birth through 3 months	4 through 7 months	8 through 11 months
Lunch	4-6 fluid ounces of breast milk <sup>2,3</sup> or formula <sup>1</sup>	4-8 fluid ounces of breast milk <sup>2,3</sup> or formula <sup>1</sup> ;  0-3 tablespoons of infant cereal <sup>1,4</sup> ;  0-3 tablespoons of fruit and/or vegetable <sup>4</sup>	6-8 fluid ounces of breast milk <sup>2,3</sup> or formula <sup>1</sup> ;  and  2-4 tablespoons of infant cereal <sup>1</sup> ; and/or  1-4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans, or peas; or  ½-2 ounces of cheese; or  1-4 tablespoons of cottage cheese, cheese food, or cheese spread; and  1-4 tablespoons of fruit and/or vegetable

<sup>1</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>2</sup> It is recommended that breast milk be served in place of formula from birth through 11 months.

<sup>3</sup> For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

<sup>4</sup> A serving of this component is optional.

**§ 210.10a [Removed]**

6. Section 210.10a is removed.

**§ 210.15 [Amended]**

7. In section 210.15, paragraph (b)(2) is amended by removing the words “menu records as required under § 210.10a and production and”.

**§ 210.18 [Amended]**

8. In section 210.18:  
 a. Paragraph (b)(2)(ii) is revised;  
 b. Paragraph (g)(2) is revised;  
 c. The first sentence of paragraph (h)(2) is revised;  
 d. Paragraph (i)(3) is amended by designating the undesignated paragraph following paragraph (i)(3)(i)(B) as paragraph (i)(3)(i)(C); and  
 e. Paragraph (i)(3)(ii) is revised.  
 The revisions read as follows:

**§ 210.18. Administrative reviews.**

\* \* \* \* \*

(b) *Definitions.* \* \* \*

(2) \* \* \*

(ii) *Performance Standard 2—Meal Elements.* Lunches claimed for reimbursement within the school food authority contain meal elements (food items/components, menu items or other

items, as applicable) as required under § 210.10.

\* \* \* \* \*

(g) *Critical areas of review.* \* \* \*

(2) *Performance Standard 2 (Lunches claimed for reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.* For each school reviewed, the State agency must:

(i) For the day of the review, observe the serving line(s) to determine whether all required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10 are offered.

(ii) For the day of the review, observe a significant number of the Program lunches counted at the point of service for each type of serving line, to determine whether those lunches contain the required number of meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

(iii) Review menu records for the review period to determine whether all required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10 have been offered.

(h) *General areas of review.* \* \* \*

(2) *Food quantities.* For each school reviewed, the State agency must observe a significant number of Program lunches counted at the point of service for each type of serving line to determine whether those lunches appear to provide meal elements (food items/components, menu items or other items, as applicable) in the quantities required under § 210.10. \* \* \*

\* \* \* \* \*

(i) *Follow-up reviews.* \* \* \*

(3) *Review thresholds.* \* \* \*

(ii) For Performance Standard 2—10 percent or more of the total number of Program lunches observed in a school food authority are missing one or more of the required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

\* \* \* \* \*

9. In § 210.19:

a. Redesignate paragraph (a)(1) introductory text, paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) as paragraphs (a)(1)(i), (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vii), respectively, and add new paragraphs (a)(1)(ii) and (a)(1)(vi);

- b. Revise newly redesignated paragraph (a)(1)(i);
- c. Revise the first sentence in newly redesignated paragraph (a)(1)(iii);
- d. Revise newly redesignated paragraph (a)(1)(iv); and
- e. Revise paragraph (c)(6)(i).

The additions and revisions read as follows:

**§ 210.19 Additional responsibilities.**

(a) *General Program management.*  
\* \* \*

(1) *Compliance with nutrition standards.* (i) Beginning with School Year 1996–1997, State agencies shall evaluate compliance, over the school week, with the nutrition standards for lunches and, as applicable, for breakfasts. Review activity may be confined to lunches served under the Program unless a menu planning approach is used exclusively in the School Breakfast Program or unless the school food authority only offers breakfasts under the School Breakfast Program. For lunches, compliance with the requirements in § 210.10(b) and § 210.10(c), (d), or (i)(1) or the procedures developed under § 210.10(l), as applicable, is assessed. For breakfasts, see § 220.13(f)(3) of this chapter.

(A) These evaluations may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately.

(B) The type of evaluation conducted by the State agency shall be determined by the menu planning approach chosen by the school food authority. At a minimum, the State agency shall review at least one school for each type of menu planning approach used in the school food authority.

(C) In addition, State agencies are encouraged to review breakfasts offered under the School Breakfast Program as well if the school food authority requires technical assistance from the State agency to meet the nutrition standards or if corrective action is needed. Such review shall determine compliance with the appropriate requirements in § 220.13(f)(3) of this chapter and may be done at the time of the initial review or as part of a follow-up to assess compliance with the nutrition standards.

(ii) At a minimum, State agencies shall conduct evaluations of compliance with the nutrition standards in § 210.10 and § 220.8 of this Chapter at least once during each 5-year review cycle provided that each school food

authority is evaluated at least once every 6 years, *except that* the first cycle shall begin July 1, 1996, and shall end on June 30, 2003. The compliance evaluation for the nutrition standards shall be conducted on the menu for any week of the current school year in which such evaluation is conducted. The week selected must continue to represent the current menu planning approach(es).

(iii) For school food authorities choosing the nutrient standard or assisted nutrient standard menu planning approaches provided in § 210.10(i), § 210.10(j), § 220.8(e) or § 220.8(f) of this chapter, or developed under the procedures in § 210.10(l) or § 220.8(h) of this chapter, the State agency shall assess the nutrient analysis to determine if the school food authority is properly applying the methodology in these paragraphs, as applicable. \* \* \*

(iv) For school food authorities choosing the food-based menu planning approaches provided in § 210.10(k) or § 220.8(g) of this chapter or developed under the procedures in § 210.10(l) or § 220.8(h) of this chapter, the State agency must determine if the nutrition standards in § 210.10 and § 220.8 of this chapter are met. The State agency shall conduct a nutrient analysis in accordance with the procedures in § 210.10(i) or § 220.8(e) of this chapter, as appropriate, except that the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers lunches or breakfasts using the food-based menu planning approaches provided in § 210.10(k) and § 220.8(g) of this chapter and that conducts its own nutrient analysis under the criteria for such analysis established in § 210.10 and § 220.8 of this chapter for the nutrient standard and assisted nutrient standard menu planning approaches; or

(B) Develop its own method for compliance reviews, subject to USDA approval.

(vi) For school food authorities following an alternate approach as provided under § 210.10(l) or § 220.8(h) of this chapter that does not allow for use of the monitoring procedures in paragraphs (a)(1)(ii) or (a)(1)(iii) of this section, the State agency shall monitor compliance following the procedures developed in accordance with § 210.10(l) or § 220.8(h) of this chapter, whichever is appropriate.

(c) *Fiscal action.* \* \* \*

(6) *Exceptions.* \* \* \*

(i) when any review or audit reveals that a school food authority is failing to

meet the quantities for each meal element (food item/component, menu item or other items, as applicable) as required under § 210.10.

\* \* \* \* \*

**PART 220—SCHOOL BREAKFAST PROGRAM**

1. The authority citation continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In part 220, the words “or § 220.8a, whichever is applicable” are removed wherever they appear in the following places:

- § 220.2(b);
- § 220.7(e)(2);
- § 220.9(a);
- Appendix A to Part 220; and
- Appendix C to Part 220.

3. In § 220.2,

- Revise paragraph (p–1), and
- Amend paragraph (t) by removing the words “or § 220.8, whichever is applicable.”

The revision reads as follows:

**§ 220.2 Definitions.**

\* \* \* \* \*

(p–1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* means ways to develop breakfast menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met in accordance with § 220.8(e)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, breakfast menu planning and analysis are completed by other entities and must incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority in accordance with § 220.8(f).

\* \* \* \* \*

4. Section 220.8 is revised to read as follows:

**§ 220.8. What are the nutrition standards and menu planning approaches for breakfasts?**

(a) *What are the nutrition standards for breakfasts for children age 2 and over?* School food authorities must ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts, when averaged over a school week, must meet the nutrition standards and the appropriate nutrient and calorie levels in this section. The nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances

(RDA) for protein, calcium, iron, vitamin A and vitamin C in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(2) Provision of the breakfast energy allowances (calories) for children in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(3) These applicable recommendations of the 1995 Dietary Guidelines for Americans:

- (i) Eat a variety of foods;
- (ii) Limit total fat to 30 percent of total calories;
- (iii) Limit saturated fat to less than 10 percent of total calories;
- (iv) Choose a diet low in cholesterol;
- (v) Choose a diet with plenty of grain products, vegetables, and fruits; and
- (vi) Choose a diet moderate in salt and sodium.

(4) These measures of compliance with the applicable recommendations of the 1995 Dietary Guidelines for Americans:

- (i) Limit the percent of calories from total fat to 30 percent of the actual number of calories offered;
- (ii) Limit the percent of calories from saturated fat to less than 10 percent of the actual number of calories offered;

(iii) Reduce sodium and cholesterol levels; and

(iv) Increase the level of dietary fiber.

(5) School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that breakfasts must offer depends on the menu planning approach used and the age/grades served. The menu planning approaches are:

- (i) Nutrient standard menu planning (see paragraphs (b) and (e) of this section);
- (ii) Assisted nutrient standard menu planning (see paragraphs (b) and (f) of this section);
- (iii) Traditional food-based menu planning (see paragraphs (c) and (g)(1) of this section);
- (iv) Enhanced food-based menu planning (see paragraphs (c) and (g)(2) of this section); or
- (v) Alternate menu planning as provided for in paragraph (h) of this section.

(6) Schools must keep production and menu records for the breakfasts they produce. These records must show how the breakfasts contribute to the required food components, food items or menu

items every day. In addition, these records must show how the breakfasts contribute to the nutrition standards in paragraph (a) of this section and the appropriate calorie and nutrient levels (see paragraphs (c), (d) or (h) of this section, depending on the menu planning approach used) over the school week. If applicable, schools or school food authorities must maintain nutritional analysis records to demonstrate that breakfasts, when averaged over each school week, meet:

- (i) The nutrition standards provided in paragraph (a) of this section; and
- (ii) The nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (b), (e)(1) of this section or developed under paragraph (h) of this section.

(b) *What are the levels for nutrients and calories for breakfasts planned under the nutrient standard or assisted nutrient standard menu planning approaches?*

- (1) The required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES)			
NUTRIENTS AND ENERGY ALLOWANCES	MINIMUM REQUIREMENTS		OPTIONAL
	PRESCHOOL	GRADES K-12	GRADES 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	<sup>1</sup>	<sup>1,2</sup>	<sup>2</sup>
Saturated fat (as a percentage of actual total food energy)	<sup>1</sup>	<sup>1,3</sup>	<sup>3</sup>
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3	3.4
RDA for Vitamin A (RE)	113	197	225
RDA for Vitamin C (mg)	11	13	14

<sup>1</sup> The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week

<sup>3</sup> Less than 10 percent over a school week

(2) Optional levels are:

OPTIONAL MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES)				
NUTRIENTS AND ENERGY ALLOWANCES	AGES 3-6	AGES 7-10	AGES 11-13	AGES 14 AND ABOVE
Energy allowances (calories)	419	500	588	625
Total fat (as a percentage of actual total food energy)	1,2	2	2	2
Saturated fat (as a percentage of actual total food energy)	1,3	3	3	3
RDA for protein (g)	5.5	7	11.25	12.5
RDA for calcium (mg)	200	200	300	300
RDA for iron (mg)	2.5	2.5	3.4	3.4
RDA for Vitamin A (RE)	119	175	225	225
RDA for Vitamin C (mg)	11.00	11.25	12.5	14.4

<sup>1</sup>The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week

<sup>3</sup> Less than 10 percent over a school week

(3) Schools may also develop a set of nutrient and calorie levels for a school week. These levels are customized for the age groups of the children in the particular school.

(c) *What are the nutrient and calorie levels for breakfasts planned under the food-based menu planning approaches?*

(1) *Traditional approach.* For the traditional food-based menu planning approach, the required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS TRADITIONAL FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)			
NUTRIENTS AND ENERGY ALLOWANCES	AGE 2	AGES 3,4,5	GRADES K-12
Energy allowances (calories)	325	388	554
Total fat (as a percentage of actual total food energy)	1	1	1,2
Saturated fat (as a percentage of actual total food energy)	1	1	1,3
RDA for protein (g)	4	5	10
RDA for calcium (mg)	200	200	257
RDA for iron (mg)	2.5	2.5	3
RDA for Vitamin A (RE)	100	113	197
RDA for Vitamin C (mg)	10	11	13

<sup>1</sup> The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school week.

(2) *Enhanced approach.* For the enhanced food-based menu planning approach, the required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS ENHANCED FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)			
NUTRIENTS AND ENERGY ALLOWANCES	REQUIRED FOR		OPTION FOR
	PRESCHOOL	GRADES K-12	GRADES 7-12
Energy allowances (calories)	388	554	618
Total fat (as a percentage of actual total food energy)	<sup>1</sup>	<sup>1,2</sup>	<sup>2</sup>
Saturated fat (as a percentage of actual total food energy)	<sup>1</sup>	<sup>1,3</sup>	<sup>3</sup>
RDA for protein (g)	5	10	12
RDA for calcium (mg)	200	257	300
RDA for iron (mg)	2.5	3	3.4
RDA for Vitamin A (RE)	113	197	225
RDA for Vitamin C (mg)	11	13	14

<sup>1</sup> The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

<sup>2</sup> Not to exceed 30 percent over a school week.

<sup>3</sup> Less than 10 percent over a school week.

(d) *What exceptions and variations are allowed in reimbursable breakfasts?*

(1) *Exceptions for medical or special dietary needs.* Schools must make substitutions in breakfasts for students who are considered to have a disability under 7 CFR Part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who cannot consume the regular breakfast because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement must, in the case of a student with a disability, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) *Variations for ethnic, religious, or economic reasons.* Schools should consider ethnic and religious preferences when planning and preparing breakfasts. Variations on an experimental or continuing basis in the food components for the food-based menu planning approaches in paragraph (g) may be allowed by FNS. Any variations must be nutritionally sound and needed to meet ethnic, religious, or economic needs.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve breakfasts for reimbursement that do not meet the requirements in this section.

(e) *What are the requirements for the nutrient standard menu planning approach?*

(1) *Nutrient levels.*

(i) *Adjusting nutrient levels for young children.* Schools with children who are age 2 must at least meet the nutrition standards in paragraph (a) of this section and the preschool nutrient and calorie levels in paragraph (b)(1) of this section over a school week. Schools may also use the preschool nutrient and calorie levels in paragraph (b)(2) of this section or may calculate nutrient and calorie levels for two year olds. FNS has a method for calculating these levels in menu planning guidance materials.

(ii) *Minimum levels for nutrients.* Breakfasts must at least offer the nutrient and calorie levels for the required grade groups in the table in paragraph (b)(1) of this section. Schools may also offer breakfasts meeting the nutrient and calorie levels for the age groups in paragraph (b)(2) of this section. If only one grade or age group is outside the established levels, schools may follow the levels for the majority of the children. Schools may also customize the nutrient and calorie levels for the children they serve. FNS has a method for calculating these levels in guidance materials for menu planning.

(2) *Reimbursable breakfasts.*  
(i) *Contents of a reimbursable breakfast.* A reimbursable breakfast must include at least three menu items. All menu items or foods offered in a reimbursable breakfast contribute to the nutrition standards in paragraph (a) of this section and to the levels of nutrients and calories that must be met in paragraphs (c) or (e)(1) of this section. Unless offered as part of a menu item in a reimbursable breakfast, foods of minimal nutritional value (see appendix B to part 220) are not included in the nutrient analysis. Reimbursable breakfasts planned under the nutrient

standard menu planning approach must meet the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) or (e)(1) of this section.

(ii) *Offer versus serve.* Schools must offer at least three menu items. At their option, school food authorities may allow students to select only two menu items and to decline a maximum of one menu item. The price of a reimbursable breakfast does not change if the student does not take a menu item or requests smaller portions.

(3) *Doing the analysis.* Schools using nutrient standard menu planning must conduct the analysis on all menu items and foods offered in a reimbursable breakfast. The analysis is conducted over a school week. Unless offered as part of a menu item in a reimbursable breakfast, foods of minimal nutritional value (see appendix B to part 220) are not included in the nutrient analysis.

(4) *Software elements.*

(i) *The Child Nutrition Database.* The nutrient analysis is based on the Child Nutrition Database. This database is part of the software used to do a nutrient analysis. Software companies or others developing systems for schools may contact FNS for more information about the database.

(ii) *Software evaluation.* FNS or an FNS designee evaluates any nutrient analysis software before it may be used in schools. FNS or its designee determines if the software, as submitted, meets the minimum requirements. The approval of software does not mean that FNS or USDA endorses it. The software must be able to do all functions after the basic data is entered. The required functions include weighted averages and the optional combined analysis of the lunch and breakfast programs.

(5) *Nutrient analysis procedures.*

(i) *Weighted averages.* Schools must include all menu items and foods offered in reimbursable breakfasts in the nutrient analysis. Menu items and foods are included based on the portion sizes and projected serving amounts. They are also weighted based on their proportionate contribution to the breakfasts offered. This means that menu items or foods more frequently offered are weighted more heavily than those not offered as frequently. Schools calculate weighting as indicated by FNS guidance and by the guidance provided by the software. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(ii) *Analyzed nutrients.* The analysis includes all menu items and foods offered over a school week. The analysis must determine the levels of: Calories, protein, vitamin A, vitamin C, iron, calcium, total fat, saturated fat, sodium, cholesterol and dietary fiber.

(iii) *Combining the analysis of the lunch and breakfast programs.* At their option, schools may combine the analysis of breakfasts offered under this part and lunches offered under part 210 of this chapter. The analysis is done proportionately to the levels of participation in each program based on FNS guidance.

(6) *Comparing the results of the nutrient analysis.* Once the procedures in paragraph (i)(5) of this section are completed, schools must compare the results of the analysis to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (b) of this section or those developed under paragraph (e)(1) of this section. This comparison determines the school week's average. Schools must also make comparisons to the nutrition standards in paragraph (a) of this section to determine how well they are meeting the nutrition standards over the school week.

(7) *Adjustments to the menus.* Once schools know the results of the nutrient analysis based on the procedures in paragraphs (e)(5) and (e)(6) of this section, they must adjust future menu cycles to reflect production and how often the menu items and foods are offered. Schools may need to reanalyze menus when the students' selections and, consequently, production levels change. Schools may need to change the menu items and foods offered given the students' selections and may need to modify the recipes and other specifications to make sure that the nutrition standards in paragraph (a) and either paragraph (b) or (e)(1) of this section are met.

(8) *Standardized recipes.* If a school follows the nutrient standard menu

planning approach, it must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients for both measurement and preparation methods. Any standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they must be standardized and analyzed to determine the levels of calories, nutrients, and dietary components listed in paragraph (e)(5)(ii) of this section. Schools must add any local recipes to their local database as outlined in FNS guidance.

(9) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods and menu items that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods and menu items to their local database as outlined in FNS guidance. Schools or State agencies must obtain the levels of calories, nutrients, and dietary components listed in paragraph (e)(5)(ii) of this section.

(10) *Menu substitutions.* Schools may need to substitute foods or menu items in a menu that was already analyzed. If the substitution(s) occurs more than two weeks before the planned menu is served, the school must reanalyze the revised menu. If the substitution(s) occurs two weeks or less before the planned menu is served, the school does not need to do a reanalysis. However, schools should always try to substitute similar foods.

(11) *Meeting the nutrition standards.* The school's analysis shows whether their menus are meeting the nutrition standards in paragraph (a) of this section and the appropriate levels of nutrients and calories in paragraph (b) of this section or customized levels developed under paragraph (e)(1) of this section. If the analysis shows that the menu(s) are not meeting these standards, the school needs to take action to make sure that the breakfasts meet the nutrition standards and the calorie, nutrient, and dietary component levels. Actions may include technical assistance and training and may be taken by the State agency, the school food authority or by the school as needed.

(12) *Other Child Nutrition Programs and nutrient standard analysis menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare breakfasts for these programs using the

nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrient and calories for adult breakfasts offered under the Child and Adult Care Food Program.

(f) *What are the requirements for the assisted nutrient standard menu planning approach?*

(1) *Definition of assisted nutrient standard menu planning.* Some school food authorities may not be able to do all of the procedures necessary for nutrient standard menu planning. The assisted nutrient standard menu planning approach provides schools with menu cycles developed and analyzed by other sources. These sources include the State agency, other schools, consultants, or food service management companies.

(2) *Elements of assisted nutrient standard menu planning.* School food authorities using menu cycles developed under assisted nutrient standard menu planning must follow the procedures in paragraphs (e)(1) through (e)(10) of this section. The menu cycles must also incorporate local food preferences and accommodate local food service operations. The menu cycles must meet the nutrition standards in paragraph (a) of this section and meet the applicable nutrient and calorie levels for nutrient standard menu planning in paragraphs (b) or (e)(1) of this section. The supplier of the assisted nutrient standard menu planning approach must also develop and provide recipes, food product specifications, and preparation techniques. All of these components support the nutrient analysis results of the menu cycles used by the receiving school food authorities.

(3) *State agency approval.* Prior to its use, the State agency must approve the initial menu cycle, recipes and other specifications of the assisted nutrient standard menu planning approach. The State agency needs to make sure all the steps required for nutrient analysis were followed. School food authorities may also ask the State agency for assistance with implementation of their assisted nutrient standard menu planning approach.

(4) *Required adjustments.* After the initial service of the menu cycle developed under the assisted nutrient standard menu planning approach, the nutrient analysis must be reassessed and appropriate adjustments made as discussed in paragraph (e)(7) of this section.

(5) *Final responsibility for meeting the nutrition standards.* The school food authority using the assisted nutrient standard menu planning approach

retains final responsibility for meeting the nutrition standards in paragraph (a) of this section and the applicable calorie and nutrient levels in paragraphs (b) or (e)(1) of this section.

(6) *Adjustments to the menus.* If the nutrient analysis shows that the breakfasts offered are not meeting the nutrition standards in paragraph (a) of this section and the applicable calorie and nutrient levels in paragraphs (b) or (e)(1) of this section, the State agency, school food authority or school must take action to make sure the breakfasts offered meet these requirements. Actions needed include technical assistance and training.

(7) *Other Child Nutrition Programs and assisted nutrient analysis menu planning.* School food authorities that operate the Summer Food Service

Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare breakfasts for these programs using the assisted nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult breakfasts offered under the Child and Adult Care Food Program.

(g) *What are the requirements for the food-based menu planning approaches?*

(1) *Food items.* There are two menu planning approaches based on meal patterns, not nutrient analysis. These approaches are the traditional food-based menu planning approach and the enhanced food-based menu planning approach. Schools using one of these

approaches must offer these food items in at least the portions required for various age/grade groups:

(i) A serving of fluid milk as a beverage or on cereal or used partly for both;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each component:

- (A) Grains/breads; and/or
- (B) Meat/meat alternate.

(2) *Quantities for the traditional food-based menu planning approach.* At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table:

TRADITIONAL FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR BREAKFASTS			
FOOD COMPONENTS AND FOOD ITEMS	AGES 1-2	AGES 3,4 AND 5	GRADES K-12
MILK (fluid) (as a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces
JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	¼ cup	½ cup	½ cup
SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS, TWO FROM ONE COMPONENT, OR AN EQUIVALENT COMBINATION:			
<b>GRAINS/BREADS :</b>			
Whole-grain or enriched bread	½ slice	½ slice	1 slice
Whole-grain or enriched biscuit, roll, muffin, etc.	½ serving	½ serving	1 serving
Whole-grain, enriched or fortified cereal	¼ cup or 1/3 ounce	1/3 cup or ½ ounce	¾ cup or 1 ounce
<b>MEAT OR MEAT ALTERNATES:</b>			
Meat/poultry or fish	½ ounce	½ ounce	1 ounce
Alternate protein products <sup>1</sup>	½ ounce	½ ounce	1 ounce
Cheese	½ ounce	½ ounce	1 ounce
Large egg	½	½	½
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons
Nuts and/or seeds (as listed in program guidance) <sup>2</sup>	½ ounce	½ ounce	1 ounce
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup

<sup>1</sup> Must meet the requirements in appendix A of this part.

<sup>2</sup> No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

(3) *Quantities for the enhanced food-based menu planning approach.* At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table:

ENHANCED FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR BREAKFASTS				
FOOD COMPONENTS AND FOOD ITEMS	REQUIRED FOR			OPTION FOR
	AGES 1-2	PRESCHOOL	GRADES K-12	GRADES 7-12
Milk (fluid) (as a beverage, on cereal or both)	4 fluid ounces	6 fluid ounces	8 fluid ounces	8 fluid ounces
JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice	¼ cup	½ cup	½ cup	½ cup
SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS, TWO FROM ONE COMPONENT OR AN EQUIVALENT COMBINATION:				
GRAINS/BREADS:				
Whole-grain or enriched bread	½ slice	½ slice	1 slice	1 slice
Whole-grain or enriched biscuit, roll, muffin, etc.	½ serving	½ serving	1 serving	1 serving
Whole-grain, enriched or fortified cereal	¼ cup or 1/3 ounce	1/3 cup or ½ ounce	¾ cup or 1 ounce	¾ cup or 1 ounce plus an additional serving of one of the Grains/Breads above.
MEAT OR MEAT ALTERNATES:				
Meat/poultry or fish	½ ounce	½ ounce	1 ounce	1 ounce
Alternate protein products <sup>1</sup>	½ ounce	½ ounce	1 ounce	1 ounce
Cheese	½ ounce	½ ounce	1 ounce	1 ounce
Large egg	½	½	½	½
Peanut butter or other nut or seed butters	1 tablespoon	1 tablespoon	2 tablespoons	2 tablespoons
Cooked dry beans and peas	2 tablespoons	2 tablespoons	4 tablespoons	4 tablespoons
Nuts and/or seeds (as listed in program guidance) <sup>2</sup>	½ ounce	½ ounce	1 ounce	1 ounce
Yogurt, plain or flavored, unsweetened or sweetened	2 ounces or ¼ cup	2 ounces or ¼ cup	4 ounces or ½ cup	4 ounces or ½ cup

<sup>1</sup> Must meet the requirements in appendix A of this part.

<sup>2</sup> No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

(4) *Offer versus serve.* Each school must offer all four required food items listed in paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse one food item from any component. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline

one of the four food items must not affect the charge for a reimbursable breakfast.

(5) *Meal pattern exceptions for outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement.

(h) *What are the requirements for alternate menu planning approaches?*

(1) *Definition.* Alternate menu planning approaches are those adopted or developed by school food authorities or State agencies that differ from the standard approaches established in paragraphs (e) through (g) of this section.

(2) *Use and approval of major changes or new alternate approaches.* Within the guidelines established for developing alternate menu planning approaches, school food authorities or State agencies may modify one of the established menu planning approaches in paragraphs (e) through (g) of this section or may develop their own menu planning approach. The alternate menu planning approach must be available in writing for review and monitoring purposes. No formal plan is required; guidance material, a handbook or protocol is sufficient. As appropriate, the material must address how the guidelines in paragraph (h)(3) of this section are met. A State agency that develops an alternate approach that is exempt from FNS approval under paragraph (h)(2)(iii) of this section must notify FNS in writing when implementing the alternate approach.

(i) *Approval of local level plans.* Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) *Approval of State agency plans.* Unless exempt under paragraph (h)(2)(iii) of this section, any State agency-developed menu planning approach must have prior FNS approval.

(iii) *State agency plans not subject to approval.* A State agency-developed menu planning approach does not need FNS approval if:

(A) Five or more school food authorities in the State use it; and

(B) The State agency maintains ongoing oversight of the operation and evaluation of the approach and makes any needed adjustments to its policies and procedures to ensure that the appropriate guidelines in paragraph (h)(3) of this section are met.

(3) *Elements for major changes or new approaches.* Any alternate menu planning approach must:

(i) offer fluid milk, as provided in paragraph (i) of this section;

(ii) include the procedures for offer versus serve if the school food authority chooses to implement the offer versus serve option. Alternate approaches should follow the offer versus serve procedures in paragraphs (e)(2)(ii) and (g)(4) of this section, as appropriate. If these requirements are not followed, the approach must indicate:

(A) The affected age/grade groups;

(B) The number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable breakfast under offer versus serve;

(C) How such procedures will reduce plate waste; and

(D) How a reasonable level of calories and nutrients for the breakfast as taken is provided.

(iii) Meet the Recommended Dietary Allowances and breakfast energy allowances (nutrient levels) and indicate the age/grade groups served and how the nutrient levels are met for those age/grade groups;

(iv) Follow the requirements for competitive foods in §§ 220.2(i-1) and 220.12 and appendix B to this part;

(v) Follow the requirements for counting food items and products towards meeting the meal patterns. These requirements are found in paragraphs (g) and (i) of this section, in appendices A through C to this part, and in instructions and guidance issued by FNS. This only applies if the alternate approach is a food-based menu planning approach.

(vi) Identify a reimbursable breakfast at the point of service.

(A) To the extent possible, the procedures provided in paragraph (e)(2)(i) of this section for nutrient standard or assisted nutrient standard menu planning approaches or for food-based menu planning approaches provided in paragraph (g) of this section must be followed. Any instructions or guidance issued by FNS that further defines the elements of a reimbursable breakfast must be followed when using the existing regulatory provisions.

(B) Any alternate approach that deviates from the provisions in paragraph (e)(2)(i) or paragraph (g) of this section must indicate what constitutes a reimbursable breakfast, including the number and type of items (and, if applicable, the quantities for the items) which comprise the breakfast, and how a reimbursable breakfast is to be identified at the point of service.

(vii) explain how the alternate menu planning approach can be monitored under the applicable provisions of § 210.18 and § 210.19 of this chapter, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, if the procedures under § 210.19 of this chapter cannot be used to monitor the alternate approach, a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (a)(1) through (a)(4) of this section must be included; and

(viii) follow the requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (e)(4) and (e)(5) of this section unless a State agency-developed approach meets

the criteria in paragraph (h)(2)(iii) of this section. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(i) *What are the requirements for offering milk?*

(1) *Serving milk.* A serving of milk as a beverage or on cereal or used in part for each purpose must be offered for breakfasts.

(2) *Inadequate milk supply.* If a school cannot get a supply of milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve breakfasts during the emergency period with an alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may allow schools to substitute canned or dry milk in the required quantities in the preparation of breakfasts. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" includes reconstituted or recombined milk, or otherwise as allowed by FNS through a written exception.

(j) *What are the requirements for the infant meal pattern?* Schools must offer infants ages birth through 11 months of age an infant breakfast. Foods included in the infant breakfast pattern must be of texture and consistency appropriate for the age group served. Foods must be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parents in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food in the meal patterns in paragraph (j)(3) of this section must be provided to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. Either breast milk or iron-fortified infant formula must be served for the entire first year. For some breastfed infants who regularly consume less than the

minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional ounces offered if the infant is still hungry. The infant breakfast pattern must have at least each of the following components in the amounts indicated for the appropriate age group:

(1) Birth through 3 months—4 to 6 fluid ounces of breast milk or iron-fortified infant formula.

(2) 4 through 7 months—4 to 8 fluid ounces of breast milk or iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(3) 8 through 11 months—6 to 8 fluid ounces of breast milk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

**BREAKFAST PATTERN FOR INFANTS**

	Birth through 3 months	4 through 7 months	8 through 11 months
<b>Breakfast</b>	4-6 fluid ounces formula <sup>1</sup> or breast milk <sup>2,3</sup>	4-8 fluid ounces of formula <sup>1</sup> or breast milk <sup>2,3</sup> ; 0-3 tablespoons of infant cereal <sup>1,4</sup>	6-8 fluid ounces of formula <sup>1</sup> or breast milk <sup>2,3</sup> ; and 2-4 tablespoons of infant cereal <sup>1</sup> ; and 1-4 tablespoons of fruit and/or vegetable

<sup>1</sup> Infant formula and dry infant cereal must be iron-fortified.

<sup>2</sup> It is recommended that breast milk be served in place of formula from birth through 11 months.

<sup>3</sup> For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

<sup>4</sup> A serving of this component is optional.

(k) *What about serving additional foods?* Schools may offer additional foods with breakfasts to children over one year of age.

(l) *Must schools offer choices at breakfast?* FNS encourages schools to offer children a selection of foods and menu items at breakfast. Choices provide variety and encourage consumption. Schools may offer choices of reimbursable breakfasts or foods within a reimbursable breakfast. When a school offers a selection of more than one type of breakfast or when it offers a variety of food components, menu items or foods and milk for choice as a reimbursable breakfast, the school must offer all children the same selection(s) regardless of whether the child is eligible for free or reduced price breakfasts or must pay the designated

full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(m) *What should schools do about nutrition disclosure?* FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards in paragraph (a) for school breakfasts.

**§ 220.8a [Removed].**

5. Section 220.8a is removed in its entirety.

6. In § 220.13, paragraph (f)(3) is revised to read as follows:

**§ 220.13 Special responsibilities of State agencies.**

\* \* \* \* \*

(f) \* \* \*

(3) For the purposes of compliance with the nutrition standards in § 220.8(a) and the nutrient and calorie levels in § 220.8(b) or (c) or those developed under § 220.8(e)(1) or (h), the State agency shall follow the provisions specified § 210.19(a)(1) of this chapter.

\* \* \* \* \*

**§ 220.14 [Amended].**

7. In § 220.14, amend paragraph (h) by removing the words “or § 220.8a(a)(1), (b)(2), and (b)(3)”.

Dated: April 27, 2000.

**Shirley R. Watkins,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 00-11259 Filed 5-8-00; 8:45 am]

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# Federal Register

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**Tuesday,  
May 9, 2000**

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## **Part IV**

# **Environmental Protection Agency**

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**40 CFR Part 61**

**National Emission Standards for  
Hazardous Air Pollutants; Standard for  
Emissions of Radionuclides Other Than  
Radon From Department of Energy  
Facilities; Standard for Radionuclide  
Emissions From Federal Facilities Other  
Than Nuclear Regulatory Commission  
Licenses and Not Covered by Subpart H;  
Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 61**

[FRL-6604-2]

RIN 2060-A190

**National Emission Standards for Hazardous Air Pollutants; Standard for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; Standard for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing to amend its regulations as they apply to operations at any facility owned or operated by the Department of Energy (DOE) that emits any radionuclide other than radon-222 and radon-220 into the air and as they apply to non-DOE federal facilities in the radionuclide National Emission Standards Hazardous Air Pollutants (NESHAPs). These regulations require emission sampling, monitoring and calculations to identify compliance with the standard. To sample and monitor these radionuclide air emissions, both require radionuclide emissions from point sources to be measured in accordance with the guidance presented in the American National Standard Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities, ANSI 1969. This ANSI standard was revised and replaced by the new ANSI 1999 standard, entitled "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities." This proposed amendment will require the use of the new ANSI 1999 standard for newly constructed or modified sources subject to these radionuclide NESHAPs.

**DATES:** Comments on this proposed action must be received in writing at the address given below on or before by June 9, 2000. A public hearing will be held on July 12, 2000, in Washington, DC if a request for such a hearing is received by June 9, 2000.

**ADDRESSES:** Comments on the proposal should be submitted (in duplicate) to: Central Docket (6102), Attn: Docket No. A-94-60, U.S. Environmental Protection Agency, 401 M Street, SW, Room M1500, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposal, contact: Ms. Robin Anderson, Center for Waste Management, Office of Radiation

and Indoor Air, U.S. Environmental Protection Agency, Mailstop 6608J, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email: anderson.robin@epa.gov or by phone (202) 564-9385. For information concerning the public hearing, contact: Eleanor Thornton-Jones at the same address, by email: [thornton.leanor@epa.gov](mailto:thornton.leanor@epa.gov) or by phone (202) 564-9773.

**SUPPLEMENTARY INFORMATION:****Docket**

Docket A-94-60 contains the rulemaking record. The docket is available for public inspection between the hours of 8 a.m. and 5 p.m., Monday through Friday, in room M-1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

**A. Background***A. Regulatory History*

On October 31, 1989, we promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAPs) under Section 112 of the Clean Air Act to control radionuclide emissions to the ambient air from a number of different source categories (54 FR 51654, December 15, 1989 (Docket A-94-60, Item II-A-1)). Subpart H of 40 CFR Part 61 is one of the source categories covered in this 1989 final rule. Facilities owned and operated by the Department of Energy (DOE) are covered by Subpart H. DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some facilities conduct nuclear energy and weapons research and development, some enrich uranium and produce plutonium for nuclear weapons and reactors, and some process, store and dispose of radioactive wastes. These facilities handle significant amounts of radioactive material and can emit radionuclides into the air. Some of the DOE facilities emitting radionuclides are on large sites covering hundreds of square miles in remote locations. Some of the smaller sites resemble typical industrial facilities and are located in suburban areas. These facilities emit a wide variety of radionuclides in various physical and chemical states. The purpose of Subpart H is to limit radionuclide emissions (not including radon) from the stacks and vents at DOE facilities so that no member of the public receives an effective dose equivalent of more than 10 millirem per year (mrem/yr).

Subpart I is the standard for non-DOE federal facilities in the radionuclide NESHAPs. The facilities in this category

can emit a variety of radionuclides. These radionuclides can affect individuals by inhalation, ingestion, ground deposition and immersion pathways. Individual facilities may emit only one or two radionuclides affecting only one or two pathways. The purpose of Subpart I is to limit radionuclide emissions, including iodine, from the stacks and vents at non-DOE federal facilities including Department of Defense (DOD) and other research and industrial facilities so that no member of the public receives an effective dose equivalent of more than 10 mrem/year. Also, emissions of iodine shall not exceed an effective dose equivalent of 3 mrem/year to any member of the public.

Both Subparts H and I require emission sampling, monitoring and calculations to identify compliance with the standard. To sample and monitor these radionuclide air emissions, Subpart H in § 61.93, and Subpart I in § 61.107, require radionuclide emissions at all release points which have a potential to discharge radionuclides into the air which could cause an effective dose equivalent in excess of 1% of the standard. These measurements must be made in accordance with the guidance presented in the ANSI N13.1-1969, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities." (Docket A-94-60, Item II-D-1) However, the 1969 ANSI standard has recently been revised, changed in scope, and retitled as, "ANSI N13.1-1999: Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities." (Docket A-94-60, Item II-D-3) It was published in the May 1999, *Health Physics Newsletter* by the Health Physics Society Standard Committee and its ANSI Working Group.

After October 1, 2000, ANSI N13.1-1999 will be the required sampling guide for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92 of Subpart H and § 61.102 of Subpart I.

*B. Purpose of ANSI N13.1-1999*

The original ANSI N13.1-1969 Standard, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities," was developed to provide engineers and designers guidance to adequately sample air in the facility to determine the radiation exposure to facility workers and to members of the public. The new ANSI N13.1-1999 narrows the scope of the standard from any air in the facility to only ducts and stacks of nuclear facilities. It provides a performance-based criteria for the

design and use of systems for sampling the releases of airborne radioactive substances in ducts and stacks.

We determined that it would be appropriate to consider adopting the revised standard based on our independent review of ANSI N13.1-1999. Our review indicated that the difference between the two standards that could significantly impact the representativeness of the sample extracted was the requirement for multiple sampling nozzles and isokinetic sampling cited in ANSI N13.1-1999. In June 1994, we approved the use of single-point sampling using a shrouded probe as an alternative methodology to demonstrate compliance with 40 CFR Part 61, Subpart H, § 61.93(b)(2)(ii). However, this alternative methodology was never promulgated and subsequently not consistently used by DOE. ANSI N13.1-1999 advocates the use of single point sampling using a similar shrouded probe by stating, "the use of these rakes [multiple-point sampling nozzles] is no longer considered good practice." This assertion is supported by documented research on the shrouded probe. In a memo, dated August 26, 1993 (Docket A-94-60, Item II-D-7), from DOE to EPA, it was stated that:

The single-point sampling systems for sampling radioactive particulate that are based upon the shrouded probe and located according to principles and criteria developed at LANL [Los Alamos National Laboratory] in collaboration with Texas A&M University, are simpler, more reliable and provide more representative sampling performance over a wide range of sampling conditions than the standard systems. Losses in the probe inlet and sampling transport line are significantly reduced.

Since 1997, DOE and EPA staff have met on a regular basis to discuss the significant issues surrounding Subpart H. In June 1999, DOE submitted a paper to the EPA entitled, "Proposed Implementation of ANSI N13.1-1999 at the Department of Energy." (Docket A-94-60, Item II-D-6) The purpose of this paper was to describe how DOE could implement ANSI N13.1-1999. This paper states that:

ANSI N13.1-1999 appears to be appropriate for stack sampling and monitoring of radioactive emissions at new DOE facilities and at facilities that are undergoing significant modifications to ventilation systems. The standard describes a low cost, low maintenance measurement system, with superior performance and one that is easy to operate. It is the preferred system to install in new facilities. However, in existing DOE facilities, many require modifications that are difficult and costly. The single-point sampling approach is drastically different from the isokinetic,

multi-probe sampling approach utilized in existing stack monitoring systems that are in compliance with ANSI N13.1-1969. Upgrades to the new ANSI require the complete removal of existing systems, with the installation of the new systems requiring substantial testing of stack flow characteristics and extensive retrofitting and rework of the stack.

We have taken into account the results of the DOE implementation paper, past research on the shrouded probe and the independent review of ANSI N13.1-1999 in developing this proposal to amend Subpart H and Subpart I to incorporate ANSI N13.1-1999 for any newly constructed sources and any source undergoing modification, resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92 of Subpart H and § 61.102 of Subpart I.

## Discussion of the Proposal

### A. Justification for the Proposal

Justification for the proposal is centered around research which indicates that single-point sampling using the shrouded probe (ANSI N13.1-1999) is superior in performance to multi-point sampling using isokinetic probes (ANSI N13.1-1969). This conclusion is documented in the report "Single Point Aerosol Sampling: Evaluation of Mixing and Probe Performance in a Nuclear Stack" by John C. Rodgers *et al.* (1995) (Docket A-94-60, Item II-D-4). A summary of the results found in this paper is provided. The term "ANSI standard" used in this summary below refers to the ANSI N13.1-1969 standard.

Facilities of the DOE under Subpart H and non-DOE federal facilities under Subpart I are required under the EPA NESHAPs to continuously monitor radionuclide emissions from any stacks or ducts that could contribute more than 0.1 millirem per year to the most affected member of the public. ANSI N13.1-1969 serves several roles in implementation of the requirements of the radionuclide NESHAPs. First, it is intended to provide guidance on the number of sampling points that should be used at a given site, with the larger ducts requiring more sampling points than smaller ducts, and rectangularly-shaped ducts requiring more sampling points than circular ducts. As many as 20 sampling points are recommended for large rectangular ducts. However, the ANSI standard recognizes that fewer points may be used if careful evaluation of the sample extraction location shows that the concentration profile is relatively flat as a result of good mixing in the stack or duct. Second, the ANSI standard provides guidance on the design of probes; it recommends sharp-edged probes followed by 90° bends, with a constant internal diameter from the inlet through the elbow. Third, when the standard required multiple probes, it provides designs for rakes of such probes.

It has been known for some time (Rodgers, 1987; Turner *et al.*, 1989; McFarland and Rodger, 1993) that the methodology prescribed in ANSI N13.1-1969 needed to be improved and updated. The use of the "8-and-2-criterion" is not a reliable predictor of stack mixing conditions. [For clarification, "8-and-2-criterion" comes from 40 CFR 60, Appendix A, Method 1: "Sampling or velocity measurement is performed at a site located at least eight stack or duct diameters downstream and two diameters upstream from any flow disturbance such as a bend, expansion, or contraction in the stack, or from a visible flame." ANSI N13.1-1969 provides a similar sampling method: "The distance from the transition or elbow to the point of sampling should be a minimum of five and preferably ten or more diameters downstream \* \* \*. It is recommended that the velocity distribution be measured at the anticipated section to determine that flow is fully developed and mixing complete."] In particular, it does not provide assurance that fluid momentum and contaminant concentration are both well mixed at the sampling location. Use of a multi-nozzle rake can lead to significant internal wall losses of aerosol particles. Fan *et al.* (1992) tested such a probe and found that approximately 75% of liquid 10 μ aerodynamic diameter (AD) aerosol particles were impacted on the internal wall and only 25% transmitted through a rake to a filter collector. The most accurate and effective method of achieving continuous representative sampling of radioactive aerosol effluents is through the use of a suitably designed shrouded probe extracting samples from a single, properly prepared and located point in the flow.

ANSI N13.1-1999 endorses single point sampling of emissions and provides performance criteria for selecting the appropriate sampling location in the stack and criteria for evaluating the performance of the sampling probe and transport system. Sampling systems, based on the single point sampling approach, that meet the specified performance criteria will meet the precision and accuracy objective of this standard. This approach to sampling airborne, radioactive emissions from stacks and ducts is considered to be the best approach to achieving representative sampling of emissions at a low cost and low maintenance.

The paper, "Single Point Aerosol Sampling: Evaluation of Mixing and Probe Performance in a Nuclear Stack," by John C. Rodgers *et al.* concluded by indicating that:

The transmission ratio (ratio of aerosol concentration at the probe exit plane to the concentration in the free stream) was 107% for a 113 L/min (4-cfm) anisokinetic shrouded probe, but only 20% for an isokinetic probe that follows the ANSI N13.1-1969 requirements. Even a specially designed isokinetic probe showed a transmission ratio of 63%. As a consequence of these limitations, recommendations for

Alternative Reference Methodologies (the shrouded probe) for representative sampling of stacks and ducts for emissions of radionuclides were prepared (McFarland and Rodgers, 1993). These were submitted by DOE to the EPA Administrator under the provisions of 40 CFR 61, Subpart H. EPA gave approval in November, 1994 for DOE to use the shrouded probe in its facilities (Nichols, 1994). (Docket A-94-60, Item II-C-1)

DOE has not consistently chosen to use the shrouded probe. Therefore, by incorporating ANSI N13.1-1999 into Subpart H and into Subpart I, DOE and non-DOE Federal facilities will be required to use ANSI N13.1-1999 for any newly constructed source and any source undergoing modification, resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92 of Subpart H and § 61.102 of Subpart I. It is not required for existing systems to upgrade using ANSI N13.1-1999 because of the strong effort towards decontamination and decommissioning (D&D) as well as privatization by DOE. In both cases, DOE is involved with cleaning a facility and making it available for public use. It would therefore be unnecessary and costly for an existing source to upgrade to meet the ANSI N13.1-1999 standard and then perhaps in a few years not be in existence. However, our proposed rule allows DOE the option to apply ANSI N13.1-1999 to existing sources.

Comments are invited on this proposal. We will monitor the implementation of this amendment, once it is promulgated, to ensure compliance with the Agency objectives.

## Regulatory Analyses

### *Regulatory Flexibility Act*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b). EPA has further determined that this proposed 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. The standards being amended apply only to Federal facilities.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Today's action contains no Federal mandates (under the regulatory

provisions of Title II of UMRA) for State, local or tribal governments or the private sector.

### *Paperwork Reduction Act*

There are no information collection requirements in this proposed rule.

### *Review Under Executive Order 12866*

Under Executive Order 12866, 58 FR 51736 (October 4, 1993), EPA must determine whether a regulation is "significant" and therefore subject to review by the Office of Management and Budget. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

EPA has determined that this action does not meet any of the criteria enumerated above, and therefore does not constitute a "significant regulatory action" under the terms of the Order.

### *Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 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 is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

### *Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are 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 Section 6 of 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 does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, 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.

### *Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

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 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 proposed rule will not significantly or uniquely affect the communities of Indian tribal governments because it will not impose substantial direct compliance costs on such communities. Any cost to implement ANSI N13.1-1999 will be the responsibility of the applicable Federal facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*The National Technology Transfer and Advancement Act 2 of 1995 (NTTAA)*

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agencies decides not to use available and applicable voluntary consensus standards.

In this rulemaking, EPA proposes to use the ANSI N13.1-1999, entitled, "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," (ANS/HPS N13.1-1999) a consensus standard developed by the American National Standards Institute (ANSI) Working Group.

The American National Standards Institute (ANSI) has served as administrator and coordinator of the United States private sector voluntary standardization system for 80 years, by promoting and facilitating voluntary consensus standards and conformity assessment systems and by promoting their integrity.

**List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Radionuclides,

Radon, Reporting and recordkeeping requirements.

Dated: April 27, 2000.

**Robert Perciasepe,**  
*Assistant Administrator for Air and Radiation.*

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 61 as follows:

**PART 61—[AMENDED]**

1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7414, 7416, 7601, and 7602.

**Subpart A—[Amended]**

2. Section 61.18 is amended by adding paragraph (c)(2) to read as follows:

**§ 61.18 Incorporations by reference.**

\* \* \* \* \*

(c) \* \* \*

(2) ANSI N13.1-1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," IBR approved for § 61.93(b)(1)(i), (ii), (iii), (2)(i), (ii), (iii), (iv); and § 61.107(b)(1)(i), (ii), (iii), (2)(i), (ii), (iii), (iv).

\* \* \* \* \*

**Subpart H—[Amended]**

2. Section 61.93 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

**§ 61.93 Emission monitoring and test procedures.**

\* \* \* \* \*

(b) \* \* \*

(1) Effluent flow rate measurements shall be made using the following methods:

(i) For existing sources:

(A) Reference Method 2 of appendix A to part 60 of this chapter or ANSI N13.1-1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities" (incorporated by reference—see § 61.18) shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 2A of Appendix A to part 60 of this chapter shall be used to measure flow rates through pipes and small vents. If ANSI N13.1-1999 was used in paragraph (b)(1)(i)(A) of this section then ANSI N13.1-1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates, only periodic measurements are necessary. If ANSI N13.1-1999 was used in paragraph (b)(1)(i)(A) of this section then ANSI N13.1-1999 shall be used to determine the frequency of the flow rate measurements.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92:

(A) ANSI N13.1-1999 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) ANSI N13.1-1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. ANSI N13.1-1999 shall be used to determine the frequency of the flow rate measurements.

(2) Radionuclides shall be directly monitored or extracted, collected and measured using the following methods:

(i) For existing sources:

(A) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 1 of appendix A to part 60 of this chapter shall be used to select monitoring or sampling sites. If ANSI N13.1-1999 was used in paragraph (b)(1)(i)(A) of this section, then ANSI N13.1-1999 shall be used to select monitoring or sampling sites.

(B) If Reference Method 1 of appendix A to part 60 of this chapter was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1-1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in appendix A or ANSIN13.1) (incorporated by reference—see § 61.18). If ANSI N13.1-1999 was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1-1999. The requirements for continuous sampling are applicable to batch

processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1-1999. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in appendix B, Method 114, of this part. However, if existing sources elect to following the criteria in ANSI N13.1-1999, then the quality assurance program in ANSI N13.1-1999 shall be used.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92:

(A) ANSI N13.1-1999 shall be used to select monitoring or sampling sites.

(B) The effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance in ANSI N13.1-1999. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1-1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities" (incorporated by reference—see § 61.18). Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different

from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in ANSI N13.1-1999.

\* \* \* \* \*

#### Subpart I—[Amended]

3. Section 61.107 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

#### § 61.107 Emission determination.

\* \* \* \* \*

(b) \* \* \*

(1) Effluent flow rate measurements shall be made using the following methods:

(i) For existing sources:

(A) Reference Method 2 of appendix A to part 60 of this chapter or ANSI N13.1-1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities" (incorporated by reference—see § 61.18) shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 2A of Appendix A to part 60 of this chapter shall be used to measure flow rates through pipes and small vents. If ANSI N13.1-1999 was used in paragraph (b)(1)(i)(A) of this section then ANSI N13.1-1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates, only periodic measurements are necessary. If ANSI N13.1-1999 was used in paragraph (b)(1)(i)(A) of this section, then ANSI N13.1-1999 shall be used to determine the frequency of the flow rate measurements.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.102:

(A) ANSI N13.1-1999 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) ANSI N13.1-1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the

variability of the effluent flow rate. ANSI N13.1-1999 shall be used to determine the frequency of the flow rate measurements.

(2) Radionuclides shall be directly monitored or extracted, collected and measured using the following methods:

(i) For existing sources:

(A) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 1 of appendix A to part 60 of this chapter shall be used to select monitoring or sampling sites. If ANSI N13.1-1999 was used in paragraph (b)(1)(i)(A) of this section, then ANSI N13.1-1999 shall be used to select monitoring or sampling sites.

(B) If Reference Method 1 of appendix A to part 60 was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1-1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in appendix A or ANSIN13.1) (incorporated by reference—see § 61.18). If ANSI N13.1-1999 was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1-1999. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1-1999. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in appendix B, Method 114, of this part.

However, if existing sources elect to following the criteria in ANSI N13.1-1999, then the quality assurance program in ANSI N13.1-1999 shall be used.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.102:

(A) ANSI N13.1-1999 shall be used to select monitoring or sampling sites.

(B) The effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance in

ANSI N13.1-1999. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1-1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities" (incorporated by reference—see § 61.18). Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in ANSI N13.1-1999.

\* \* \* \* \*

[FR Doc. 00-11553 Filed 5-8-00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

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Polymers—

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**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

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**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

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Noxious weed regulations:

Update; comments due by 5-19-00; published 3-20-00

**AGRICULTURE DEPARTMENT****Foreign Agricultural Service**

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Sugar-containing products tariff-rate quota licensing; comments due by 5-17-00; published 4-18-00

**AGRICULTURE DEPARTMENT****Food and Nutrition Service**

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National school lunch, school breakfast, and child and adult care food programs—

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Forest transportation system administration; comments due by 5-17-00; published 4-28-00

**AGRICULTURE DEPARTMENT****Food Safety and Inspection Service**

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Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations; comments due by 5-15-00; published 3-16-00

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**ENERGY DEPARTMENT**

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- Air quality implementation plans; approval and promulgation; various States:  
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- Water pollution control:  
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- Water supply:  
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- FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**  
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#### TRANSPORTATION DEPARTMENT

Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations; comments due by 5-15-00; published 3-16-00

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#### LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

#### H.R. 1615/P.L. 106-192

Lamprey Wild and Scenic River Extension Act (May 2, 2000; 114 Stat. 233)

#### H.R. 1753/P.L. 106-193

Methane Hydrate Research and Development Act of 2000 (May 2, 2000; 114 Stat. 234)

#### H.R. 3090/P.L. 106-194

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and

for other purposes. (May 2, 2000; 114 Stat. 239)

#### H.J. Res. 86/P.L. 106-195

Recognizing the 50th anniversary of the Korean War and the service by members of the Armed Forces during such war, and for other purposes. (May 2, 2000; 114 Stat. 244)

#### S. 1567/P.L. 106-196

To designate the United States courthouse located at 223 Broad Avenue in Albany, Georgia, as the "C.B. King United States Courthouse". (May 2, 2000; 114 Stat. 245)

#### S. 1769/P.L. 106-197

To exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, and for other purposes. (May 2, 2000; 114 Stat. 246)

Last List May 3, 2000

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