AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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Federal Register

7–11–00 Tuesday
Vol. 65 No. 133 July 11, 2000
Pages 42597–42854

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ00

Prevailing Rate Systems; Abolishment of the Franklin, PA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will abolish the Franklin, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Franklin and Blair Counties, PA, to the Cumberland, PA, NAF FWS wage area. This change is necessary because the Franklin wage area's host installation, Letterkenny Army Depot, has downsized its operation. This leaves the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys in the wage area.

DATES: *Effective date:* This regulation is effective on July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On February 29, 2000, the Office of Personnel Management (OPM) published an interim rule (65 FR 10673) to abolish the Franklin, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Franklin and Blair Counties, PA. The Franklin wage area consists of one survey county, Franklin County, and one area of application county, Blair County, PA. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section 532.219(b) of title 5, Code of Federal Regulations.

OPM may establish NAF wage areas when a minimum of 26 NAF wage employees have duty stations in the survey area, a local activity has the capability to host annual local wage surveys, and a minimum of 1,800 private enterprise employees are within the survey area in establishments within survey specifications. Although Franklin County, PA, has approximately 26 NAF FWS employees, the wage area's host activity, Letterkenny Army Depot, has downsized its operation. This leaves the Department of Defense without an activity in the survey area with the capability to conduct annual local wage surveys in the wage area. Therefore, Blair and Franklin Counties, PA, will become part of the Cumberland, PA, NAF wage area. The Cumberland wage area will consist of one survey county, Cumberland County, PA, and two area of application counties, Blair and Franklin Counties, PA.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change. FWS employees in Franklin and Blair Counties, PA, transferred to the Cumberland, PA, NAF wage area schedule on the first day of the first applicable pay period beginning on or after March 16, 2000. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (65 FR 10673) amending 5 CFR part 532 published on February 29, 2000, is adopted as final with no changes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17459 Filed 7–10–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ01

Prevailing Rate Systems; Abolishment of the Lebanon, PA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will abolish the Lebanon, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Lebanon County, PA, to the York, PA, NAF FWS wage area. This change is necessary because the Lebanon wage area's host installation, Fort Indiantown Gap, has downsized its operation. This leaves the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys in the wage area. The rule will also remove Columbia County, PA, as part of an NAF wage area because NAF employees no longer have duty stations in the county.

DATES: *Effective date:* This regulation is effective on July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On February 29, 2000, the Office of Personnel Management (OPM) published an interim rule (65 FR 10674) to abolish the Lebanon, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, redefine Lebanon County, PA, and remove Columbia County, PA, as part of an NAF wage area. The Lebanon wage area consists of one survey county, Lebanon County, and one area of application county, Columbia County. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section

532.219(b) of title 5, Code of Federal Regulations.

OPM may establish NAF wage areas when a minimum of 26 NAF wage employees work in the survey area, a local activity has the capability to host annual local wage surveys, and a minimum of 1,800 private enterprise employees are within the survey area in establishments within survey specifications. Lebanon County, PA, has approximately 22 NAF FWS employees, and the wage area's host activity, Fort Indiantown Gap, has downsized its operation. This leaves the Department of Defense without an activity in the survey area with the capability to conduct annual local wage surveys in the wage area. Columbia County, PA, is not a part of an NAF wage area because NAF employees no longer have duty stations in the county. Therefore, the York, PA, NAF wage area will consist of one survey county, York County, PA, and one area of application county, Lebanon County, PA.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change. FWS employees in Lebanon County, PA, transferred to the York, PA, NAF wage area schedule on the first day of the first applicable pay period beginning on or after March 2, 2000. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (65 FR 10674) amending 5 CFR part 532 published on February 29, 2000, is adopted as final with no changes.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17458 Filed 7–10–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV00–929–2 FR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Establishment of Marketable Quantity and Allotment Percentage and Other Modifications Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of cranberries that handlers may purchase from, or handle for, growers during the 2000–2001 crop year, which begins on September 1, 2000, and ends on August 31, 2001. The order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (Committee). This rule establishes a marketable quantity of 5.468 million barrels, allows for some adjustment of this figure based on final calculations of sales histories, and establishes an allotment percentage of 85 percent. This action is designed to stabilize marketing conditions and improve grower returns. Fresh and organically-grown cranberries are exempt from the volume limitations to facilitate marketing of these products. This rule also revises the method in which growers' sales histories are computed and suspends certain dates in the order which are impractical.

EFFECTIVE DATE: This final rule becomes effective July 12, 2000.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the ''Act.''

Question and Answer Overview

When Will This Final Rule Be Effective?

The final rule is effective on July 12, 2000, and the volume regulation will apply to the 2000–2001 crop year which begins on September 1, 2000, and ends on August 31, 2001.

Who Will Be Affected by This Action?

Cranberry growers and handlers/processors located in the 10-State production area will be affected by this action. The 10-State production area covers cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Why Is Volume Control Being Implemented This Year?

The Committee recommended volume control this year in order to address the serious oversupply situation being experienced by the industry. For the 1999 crop year, industry reports show that continued low grower prices will accompany record high production and inventories. Many cranberry growers are experiencing difficulties dealing with these extreme market conditions.

The Committee determined the best method of volume control would be the producer allotment program which provides for an annual marketable quantity and allotment percentage.

The use of volume control is not the only avenue that could be used to address the oversupply situation being experienced by the industry. The industry is also looking into methods of increasing demand by developing new markets, both domestic and foreign, by developing new products and by increasing promotional efforts.

What Is Marketable Quantity and Allotment Percentage?

Marketable quantity is defined as the number of pounds of cranberries needed

to meet total market demand and to provide for an adequate carryover into the next season. The marketable quantity for the 2000–2001 crop year has been established at 5.468 million barrels. This figure is subject to some change based on final calculations of sales histories. This is approximately equal to the expected demand for fruit for processing.

The allotment percentage equals the marketable quantity divided by the total of all growers' sales histories. Total growers' sales histories were set by the Committee at 6.432 million barrels. Using the formula established under the order (5.468 million barrels divided by 6.432 million barrels), the annual allotment percentage is 85 percent.

Sales of fresh and organically-grown fruit are exempt from the volume regulation. In addition, other modifications have been made to implement volume regulation.

How Are Growers' Annual Allotments Calculated?

A grower's annual allotment is the result of multiplying the individual grower's sales history by the 85% allotment percentage.

How Are Sales Histories Calculated for the 2000–2001 Season?

The Committee is responsible for calculating each grower's sales history on an annual basis. A new grower with no sales history will be issued allotment based on the State average yield per acre or total estimated commercial sales, whichever is greater. For the 2000–2001 crop, the State average yield is defined as the average State yield for the year 1997 or the average of the best four years out of the last six years, whichever is greater.

For growers with existing cranberry acreage, sales history for growers with six or more years of sales history is established by computing an average of the highest four of the most recent six years of sales. For growers with five years of sales history, the average of the best four out of the last five years is used. For growers with four years or less of commercial sales history, the sales history is calculated by using the best single sales year. The sales history of newly planted acreage belonging to existing growers which has no commercial sales history (including those with four years or less of sales history) is calculated the same way as the sales history of a new grower with no sales history. If growers with existing acreage also have newer acreage with four years of sales history or less, and such grower can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage will be treated in the same way as acreage of a grower with four years or less of sales history.

Do Growers Have Recourse if They Are Not Satisfied With Their Sales History Calculation?

If growers are dissatisfied with their sales history calculation as determined by the Committee, they can appeal to the appeals subcommittee appointed by the Committee. If growers are not satisfied with the decision by the appeals subcommittee, two other levels of appeal are available—the full Committee and the Secretary. All decisions by the Secretary will be final.

The appeals subcommittee is in the process of developing specific criteria to follow in making its decisions.

Appeals should be filed with David N. Farrimond, General Manager, Cranberry Marketing Committee, 266 Main Street, Wareham, Massachusetts 02571; Telephone: (800) 253–0862; or Fax (508) 291–1511.

Executive Orders 12866 and 12998

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, a marketable quantity and allotment percentage may be established for cranberries during any crop year. This rule establishes a marketable quantity and allotment percentage for cranberries for the 2000–2001 crop year beginning September 1, 2000, through August 31, 2001. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Introduction

As discussed in detail later in this document, the U.S. cranberry industry is experiencing an oversupply situation. Recent increases in acreage and yields have resulted in greater supplies, while demand has remained fairly constant. The result has been building inventories and reduced grower returns.

The Committee has been considering ways to cope with this oversupply situation in recent years. On March 30, 2000, the Committee recommended using volume controls (in the form of producer allotments) for the 2000–2001 crop year. Based on the Committee's recommendation and other available information, a proposed rule was issued and published in the May 30, 2000, **Federal Register** [65 FR 34411]. That rule proposed three alternative levels of volume regulation. The Committee met again on June 6, 2000, and revised its initial recommendation in several respects.

This final rule establishes a marketable quantity and allotment percentage for the 2000–2001 crop year. This action also revises procedures for calculating growers' sales histories, exempts fresh and organically-grown cranberries from volume regulation, defines State average yield per acre, increases the barrels per acre for determining a commercial crop, revises the Committee review procedures for re-determination of sales histories, and suspends the date by which the Committee notifies growers of their annual allotment. These actions are based primarily upon the recommendations made by the Committee and comments received in response to the May 30, 2000, proposed rule. The volume regulation will be effective September 1, 2000, through August 31, 2001.

Marketable Quantity, Allotment Percentage and Sales Histories

Section 929.49 of the order currently provides that if the Secretary finds from the recommendation of the Committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that year. In addition, the Secretary would establish an allotment percentage which shall equal the marketable quantity divided by the total of all growers' sales histories. The allotment percentage

would be applied to each grower's individual sales history to derive each grower's annual allotment. Handlers cannot handle cranberries unless they are covered by a grower's annual allotment.

Section 929.48 of the order provides for computing growers' sales histories to be used in calculating marketable quantities and allotment percentages under § 929.49. Sales history is defined in section 929.13 as the number of barrels of cranberries established for a grower by the Committee. The Committee has been updating growers' sales histories each season. The Committee accomplishes this by using information submitted by the grower on a production and eligibility report filed with the Committee. The order sets forth that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. For growers with four years or less of commercial sales history, the sales history has been calculated by averaging all available years of such grower's sales. A new sales history for acreage with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater. This is done for new growers, as well as those that also have acreage with sales history.

Section 929.46 of the order requires the Committee to develop a marketing policy each year prior to May 1. In its marketing policy, the Committee projects expected supply and market conditions for the upcoming season, including an estimate of the marketable quantity (defined as the number of pounds of cranberries needed to meet total market demand and to provide for an adequate carryover into the next season).

Committee's Initial Recommendation—March 30, 2000

At a March 30, 2000 meeting, the Committee estimated the 2000–2001 domestic production of cranberries at 5.89 million barrels. Carryover as of September 1, 2000, was estimated at 4.6 million barrels. Foreign production (primarily Canada) was projected at 800,000 barrels. Allowing for shrinkage of 2 percent for carryover and 4 percent for domestic and foreign production, the total adjusted available supply of cranberries was projected at 10,930,000 barrels.

Based in large part on historical sales figures, the Committee estimated utilization of processing fruit at 5.4 million barrels and of fresh fruit at 280,000 barrels.

A summary of the marketing policy follows:

CRANBERRY MARKETING POLICY, 2000 CROP YEAR ESTIMATES

Carryover as of 9/1/2000	4,600,000 barrels.
Domestic production	5,890,000 barrels.
Foreign production	800,000 barrels.
Available supply (sum of the above).	11,290,000 barrels.
Minus shrinkage	360,000 barrels.
Adjusted Supply	10,930,000 barrels.
Fresh Fruit	280,000 barrels.
Processing fruit	5,400,000 barrels.
Total Sales and Usage	5,680,000 barrels.
Carryover as of 8/31/2001	5,250,000 barrels.

The Committee determined that the marketable quantity for the 2000–2001 crop year should be established at 5.4 million barrels. This was equal to the expected demand for processing fruit. Fresh fruit sales were not included because (as discussed later in this document) fresh fruit would not be covered by the allotment percentage. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) of the order provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were set at 6.35 million barrels. Using the formula established under the order in § 929.49 (5.4 million barrels divided by 6.35 million barrels), the annual allotment percentage was 85 percent.

Proposed Rule Published on May 30, 2000

The Committee has been discussing the possible use of volume regulation for over a year. In its deliberations, concerns were voiced about the potential inequities that could result from the current process used to calculate sales histories. Because sales histories are based on an average of past years' sales, newer growers could be restricted to a greater extent than more established growers. This is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) would likely result in a sales history below future sales potential. A more established grower, on the other hand, would have a sales history more reflective of his or her production capacity.

The Committee's March 30, 2000, recommendation concerning the definition of ''commercial crop'' (explained later in this document) was intended to mitigate potential inequities. Based upon information received from cranberry growers and handlers subsequent to the March 30 meeting, the Department believed a further modification might be needed to lessen the differential impact a volume regulation could have on individual cranberry growers. For this reason, the Department proposed that a sales history for each existing grower be calculated using the best single sales year in the past six years. For a grower with less than six years of sales, the sales history would be the highest year of sales available. This type of change is contemplated under § 929.48(a)(2) of the order, which provides that the number and identity of the years used to compute sales histories may be altered by regulation. The Department did not propose a change in the way sales histories are computed for brand new acreage (acreage without any history of sales).

The Department's proposal would have changed the way most growers' sales histories were computed. If this change were adopted, each affected grower's sales history would be recalculated. The Committee staff reported that this would have resulted in a new industry total sales history of 7.6 million barrels (about 20% above the 6.35 million barrels used by the Committee). Retaining the 5.4 million barrel marketable quantity recommended by the Committee would require an allotment percentage of 71 percent. To retain the 85% allotment percentage recommended by the Committee, the marketable quantity would need to be increased to 6.46 million barrels (almost 20% above the 5.4 million barrels of expected demand for processing fruit as calculated by the Committee). In the May 30 proposed rule, the Department solicited comments on the Committee's original recommendation of marketable quantity and allotment percentage, as well as on two alternatives proposed by the Department. To summarize, the three options proposed in the May 30 rule

were as follows (the marketable quantity and total sales histories figures are all in million barrel units):

	Marketable quantity	Total sales histories	Allotment percentage
Committee Recommendation	5.4	6.35	85
USDA Option 1	5.4	7.6	71
USDA Option 2	6.46	7.6	85

The proposed rule solicited comments on these three options or appropriate modifications of them. Comments were due on June 14, 2000.

Committee's Recommendation of June 6, 2000

During the comment period, the Committee met again on June 6, 2000. The primary reason the meeting was held was to consider the various options contained in the proposed rule.

The Committee discussed the two options proposed by USDA. In order to lessen the differential impact a volume regulation would have on individual growers, the sales history calculation was proposed to be modified by USDA so that each existing grower would use the best single sales year in the past six years. A grower with less than six years of sales would use the highest year of sales available. The computation for all growers with brand new acreage was not modified from the Committee's first recommendation (using the State average yield or the total estimated commercial sales, whichever is greater). Using the revised calculation, total sales histories would be increased to 7.6 million barrels. The Committee believed that this calculation artificially inflates the total sales histories. For example, the new total exceeds the record-high 1999 production of 6.39 million barrels by 19 percent, and it exceeds the projected 2000 production (5.89 million barrels) by almost 30 percent.

The Committee also believes that the revised calculation favors production regions with more variability in yield from year to year over those with more consistent production. A Committee member at the June 6, 2000, meeting stated that the standard deviation of yields in Massachusetts is less than 15 barrels per acre, compared with more than 30 barrels per acre in Oregon. Using the best year out of the last six would benefit those States with higher variation, introducing more inequities rather than diminishing them. The proposed change would also favor growers who have planted new acreage over growers who have a more consistent record of production.

Discussion at the June 6 meeting also indicated that the proposed change would favor growers who have planted new acreage in recent years over growers who have a more consistent record of production. (No concerns were expressed about the method used for computing sales histories for new acreage with no sales history.) The Committee concluded that the proposed change in the calculation of sales histories would give undue advantages to growers who have expanded acreage considerably in recent years, and would penalize growers who maintained a consistent production base. This would, again, introduce additional inequities.

Under USDA's option 1, the marketable quantity would remain at 5.4 million barrels, as recommended by the Committee on March 30, 2000. Using the higher sales history figure of 7.6 million barrels would reduce the allotment percentage to 71 percent (5.4 million barrels divided by 7.6 million barrels). This would increase the restricted percentage from 15 to 29 percent. The consensus of the Committee was that volume regulation should not be more restrictive than an 85 percent producer allotment. Although a 15 percent restriction may not have a great immediate impact on grower returns because of the expected large crop and carryover inventories, the Committee believes that an 85 percent allotment percentage would be a good place to start for the industry to address the oversupply situation. The Committee recognizes that the market cannot be stabilized (under the marketing order) in a single year.

More importantly, many growers have been anticipating an allotment percentage not less than 85 percent and have been modifying their cultural practices accordingly. Any dramatic increase in the restricted percentage would likely be met with great opposition from the grower community. The Committee therefore concluded that an allotment percentage of 71 percent was unacceptable and rejected USDA's option 1.

Under its second option, USDA again used the higher sales history figure of 7.6 million barrels. To retain the 85% allotment percentage recommended by the Committee on March 30, the marketable quantity was raised from the 5.4 million barrels recommended by the Committee to 6.46 million barrels, an increase of almost 20 percent. The Committee believed that raising the marketable quantity to 6.46 million barrels would result in adding more fruit to the oversupply, further destabilizing the industry and lowering prices. The Committee therefore did not support USDA's option 2.

Concerns were expressed at the June 6 meeting involving growers with 4 years or less of sales histories. It was expressed that these growers could be impacted more greatly by a volume regulation than other growers because of the way the sales histories would be computed. This is because, as previously discussed, yields are increasing on younger acreage. Using an average of past years' sales, as the order provides, would result in a sales history lower than that acreage's future production capacity. To mitigate this problem, the Committee recommended adopting, in part, the change in sales history calculation proposed by USDA. Specifically, it voted to recommend, for a grower with four years or less of sales history, the best year of sales available as that grower's sales history.

Concern was also expressed that the sales history for a grower with only acreage that is 4 years old or younger (who would use the highest year as his or her sales history), would be calculated differently than the sales history for a grower with a combination of both older and younger acreage. For the more established grower, all sales off all acreage is combined, regardless of the age of the acreage. Then the average of the best four years of sales out of the last six years is used as that grower's sales history. Thus, the more established grower would not get the same adjustment for new acreage that the grower with all new acreage does. It was discussed at the meeting that the Committee does not collect information that would allow such an adjustment. Growers' sales are not segregated by the age of individual bogs, so based on the information available, an adjustment for acreage with 4 years of sales or less cannot be made. Such information could be collected by the Committee in the future.

The Committee ultimately recommended a fourth option. The Committee recommended that growers with only acreage that is 4 years old or less use the best single sales year to calculate a sales history. Growers with 5 years of sales history would use an average of their highest 4 years of sales. Growers with 6 or more years would use an average of their highest 4 years of sales of the most recent six years. New acreage for both brand new and existing growers would continue to receive a sales history using the State average yield or the total estimated commercial sales from that acreage, whichever is greater.

The Committee's recommended change in the calculation of sales histories revised the total industry sales history to 6.432 million barrels. The Committee recommended a small increase in its marketable quantity (from 5.4 to 5.468 million barrels) to retain an allotment percentage of 85 percent. The vote on this recommendation was unanimous. A summary of the various options under consideration follows (again, the marketable quantity and sales history figures are in million barrel units):

	Marketable quantity	Total sales histories	Allotment percentage
Initial Committee Recommendation	5.4	6.35	85
USDA Option 1	5.4	7.6	71
USDA Option 2	6.46	7.6	85
Revised Committee Recommendation	5.468	6.432	85

This rule implements the Committee's June 6, 2000, recommendation, with a change, by adding a new § 929.149 to the order's rules and regulations pertaining to determination of sales history. This section is modified from what appeared in the May 30, 2000, proposed rule by providing that a sales history for each grower with 5 years of sales history shall be computed by using an average of the highest four years of such grower's sales history. For a grower with six or more years of sales history, the sales history shall be computed using an average of the highest four of the most recent six years of sales. For a grower with four years or less of commercial sales history, the sales history will be computed using the highest year (the same as in the proposed rule). Sales histories for new acreage with no previous sales will be computed using the State average yield or estimated production, whichever is greater (again, the same as in the proposed rule). This rule clarifies the regulatory language pertaining to sales history for new acreage. As discussed in the proposal (65 FR 34414), sales histories for newly planted acreage by existing growers are computed in the same way as for newly planted acreage by new growers without any sales history. Finally, under this rule, if an established grower has newer acreage with four years of sales history or less, and such grower can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage will be treated in the same manner as acreage of a grower with four years or less of sales history.

This change in the way sales histories are calculated was made by the Department based on the concerns and comments regarding fairness and equity which were raised during this rulemaking. This change will likely result in a slight increase in the marketable quantity recommended by the Committee to maintain the allotment percentage at 85 percent. The Department believes that this change is needed to most equitably allocate allotment among growers, consistent with the requirements of the Act. Additionally, it is apparent that the industry will not support any restricted percentage greater than 15 percent. Although the level of restriction imposed under this rule will not likely resolve the surplus situation facing the cranberry industry in a single year, we conclude that this rule is the best course of action given the economic crisis facing the industry.

This rule also adds a new § 929.250 to set a marketable quantity of 5.468 million barrels and an allotment percentage of 85 percent. The marketable quantity is within the range proposed in the May 30 rule, and the allotment percentage is equal to that under two of the three options contained in that proposed rule. The additional change to accommodate established growers with new acreage having four years of sales history or less will result in a change in marketable quantity, but not enough to undermine this regulation. This conclusion is based on the Department's belief that sales histories of growers in this category would be increased by a relatively small amount.

Definition of Commercial Crop

The Committee unanimously recommended on March 30, 2000, that the number of barrels that defines a commercial crop under the marketing order be increased from 15 to 50 barrels per acre. Calculations of sales histories are based on ''commercial'' cranberry sales. Currently, section 929.107 defines a commercial crop as acreage that has a sufficient density of growing vines to produce at least 15 barrels per acre without replanting or renovation. This rule increases the 15 barrels per acre to 50 barrels per acre. Acreage producing less than 50 barrels per acre will not be considered to produce a commercial crop. This increase brings the order more in line with current growing conditions.

This action will assist growers who harvested cranberries for the first time in 1999. These growers will qualify for a new sales history determination if they produced less than 50 barrels per acre.

A full commercial cranberry crop is usually not harvested until 3 or 4 years after being planted. Production is usually limited during the first year, with increases in subsequent years until full capacity is reached. Under the current rule, if a grower harvested a bog for the first time in 1999, and achieved a yield of 25 barrels per acre, such grower's sales history would be calculated by using the determination for a grower with four years or less of production. This would be the actual production for that year. Therefore, in this example, for the 2000–2001 crop year the grower's sales history would be 25 barrels multiplied by the number of acres such grower harvested. The 25 barrels would be used in the calculation since it is greater than the 15 barrels per acre used to define commercial cranberry acreage.

Under this rule change, such grower's first year of sales harvested from that acreage will not count since it is less than 50 barrels per acre. Therefore, the grower will be eligible to receive the determination for growers with no sales history on such acreage (which is the State average yield or the grower's

estimated commercial sales, whichever is greater). This should benefit growers who had very low yields per acre for their first year of production.

This rule revises § 929.107 of the order's rules and regulations, consistent with the proposed rule published on May 30, 2000.

Determination of Sales History for Growers With No History on Their Acreage

As previously discussed, a new sales history for a grower with no sales history is calculated by using the State average yield per acre or the total estimated commercial sales, whichever is greater. Existing growers who have newly planted acreage will also use this calculation for their new acreage.

The Committee recommended that for the 2000–2001 crop year, the State average yield be defined as the average State yields for the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history for more established growers (an average of the best four years out of the last six years), and would average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee will use the commercial sales estimated by the grower.

To take into account the differences among the States, the Committee recommended calculating the average yield for each State using the best four of the last six years, and comparing it to the average yield for that State in 1997. The higher of the two figures for each State will be used to calculate new sales histories for new growers.

A new § 929.148 is added to the order's rules and regulations to set forth the calculation of the State average yield. This is consistent with the proposed rule published on May 30, 2000.

Fresh and Organic Fruit Exemption

The Committee also recommended on March 30, 2000, that fresh and organically-grown cranberries be exempt from volume regulation during the upcoming season. This exemption is authorized under § 929.58 of the order, which provides that the Committee may relieve from any or all requirements cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season.

Under current growing and marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Fresh cranberries are dry picked (in most cases) while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. Dry picking is a more labor intensive and expensive form of harvesting. Cranberry bogs are designated as ''fresh fruit'' bogs and are grown and harvested accordingly to produce fruit that is of the quality needed for fresh fruit. Only the lower quality fruit from a fresh bog goes to processing outlets. Yields of fresh fruit growers are typically reduced from those of processed growers. Productions costs are higher, although a premium price over fruit delivered for processing is anticipated.

Fresh cranberry sales constitute less than 5 percent of the cranberry market. All fresh cranberries can be marketed and do not compete with processing cranberries. Fresh cranberries are seasonal (due to their limited shelf life) and are not part of the growing industry inventories.

The Committee concluded that fresh supplies do not contribute significantly to the current cranberry surplus. Thus, the Committee recommended that such cranberries be exempt from the volume regulation implemented by this rule.

Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries do. The Committee estimated that about 1,000 barrels of organic fruit will be sold this season, compared to 450 barrels last season. Organic cranberries are a growing niche market and regulating them could have an adverse effect on marketing this product. Demand for organic cranberries is in line with the current limited production. Thus, all organic cranberries can be marketed, and they do not contribute in any meaningful way to the current oversupply experienced with processing fruit. The Committee therefore recommended that organically-grown cranberries be exempt from volume regulation during the upcoming season. In order to be exempt, organic cranberries will have to be certified as such by a third party organic certifying organization that is acceptable to the Committee.

The fresh fruit exemption was further discussed at the Committee's June 6, 2000, meeting. Concerns were expressed that this exemption would give an unfair advantage to some cranberry processors (those that do not handle fresh fruit) and to their growers. It was suggested that any unused allotment earned by a fresh fruit grower be forfeited, similar to what happens to unused allotment received by growers with new acreage (based on the State average yield).

The Committee considered this suggestion, but continued to support its recommendation to exempt fresh fruit from volume regulation. It was concerned that any substantive departure from the requirements proposed in the May 30 rule would require a second proposed rule to be issued and an opportunity for additional comments to be made available. In any event, the effect of the fresh fruit exemption on the market would probably be minor. The Committee stated that the way in which fresh fruit is handled in future years will be given additional consideration.

Moreover, encouraging growth in organic and fresh markets for cranberries is consistent with the Committee's (and industry) objectives to develop additional market outlets for cranberries. Future industry growth depends on expanding market outlets for cranberries and should not be discouraged.

This rule provides an exemption from volume regulation for fresh and organically-grown cranberries by adding a new § 929.158, as included in the May 30, 2000, proposed rule.

Outlets for Excess Cranberries

The purpose of the producer allotment program implemented by this rule is to limit the amount of the total crop that can be marketed for normal commercial uses. There is no need to limit the volume of cranberries that may be marketed in noncommercial or noncompetitive outlets. Thus, in accordance with § 929.61, handlers will be able to dispose of excess cranberries in certain designated outlets. That section of the order provides that noncommercial outlets may include charitable institutions and research and development projects for market development purposes. Noncompetitive outlets may include any nonhuman food use (animal feed) and foreign markets, except Canada. Canada is excluded because significant sales of cranberries to Canada could result in transshipment back to the United States of the cranberries exported there. This could disrupt the U.S. market, contrary to the intent of the volume regulation.

To ensure that excess cranberries diverted to the specified outlets do not

enter normal market channels, certain safeguard provisions are established under § 929.61. These provisions require handlers to provide documentation to the Committee to verify that the excess cranberries were actually used in a noncommercial or noncompetitive outlet. In the case of nonhuman food use, a handler would be required to notify the Committee at least 48 hours prior to disposition so that the Committee staff would have sufficient time to be available to observe the disposition of the cranberries.

The proposed rule published on May 30, 2000, proposed revising § 929.104 of the order's rules and regulations to list the outlets in which handlers can divert excess cranberries. That section currently lists outlets for ''restricted cranberries.'' ''Restricted cranberries'' is a term used in connection with withholding requirements—another type of volume regulation authorized under the order. While the specific outlets listed were not proposed for revision, changes were proposed in the regulatory text to provide that these outlets are authorized for excess cranberries under a producer allotment program. The outlets listed included all those mentioned in § 929.61 of the order.

At its June 6, 2000, meeting, the Committee recommended that foreign markets be excluded as outlets for excess cranberries.

When foreign markets were listed as potential outlets for excess cranberries, cranberry exports were not as significant to the industry as they are today. Exports of fresh cranberries for 1998 were 51,615 barrels, and for processed cranberries, 516,667 barrels. This represents about 10 percent of total sales.

The Committee indicated that the industry is actively selling cranberries in at least 54 foreign countries. The Committee concluded that it would be difficult to list all the countries that are not currently receiving U.S. cranberries (and therefore would be defined as ''noncompetitive'') and to monitor the sales activity in each such country.

Moreover, the Committee intends to continue foreign promotion activities to encourage cranberry export sales. These activities are financed, in part, by funds from USDA's Foreign Agricultural Service, which are matched by industry funds for promotional activities in foreign markets. Currently, funds are being used for promotional activities in Germany and Japan.

Additionally, individual handlers are working on developing markets in many foreign countries. Encouraging disposal of excess cranberries in countries where the Committee and individual handlers are attempting to build cranberry markets could undermine these individual efforts to develop commercial markets. Therefore, the Committee unanimously recommended that foreign countries be excluded as eligible outlets for excess cranberries.

The Department has concluded that the Committee's June 6, 2000, recommendation is unnecessary. Excess cranberries cannot be ''handled,'' which means they cannot be processed. Therefore, under current requirements, excess cannot be processed and then exported. Fresh sales are exempt from volume regulation, so fresh cranberries can be exported free from regulation. We have, however, revised § 929.104 of the regulations to clarify that excess cranberries cannot be processed and sent to foreign markets.

Appeal Procedures

Section 929.125 of the order's rules and regulations establishes an appeal procedure for growers who are dissatisfied with their sales histories as determined by the Committee pursuant to § 929.48 of the order. Under procedures which have been used, a grower may submit to the Committee a written argument within 30 days after receiving the Committee's determination of that grower's sales history, if such grower disagrees with the determination. The Committee must review its determination within a reasonable time, reviewing all the material submitted by the grower, and notify the grower of its decision. If the grower is not satisfied with the Committee's decision, that grower may appeal to the Secretary, through the Committee, within 30 days after being notified of the Committee's decision. The Secretary must review all pertinent information and render a decision. The Secretary's decision is final.

On March 30, 2000, the Committee recommended revising the process. The Department concurs with the Committee recommendation. Specifically, this rule provides than an appeals subcommittee be established and that the full Committee be provided with 15 days to further review appeals by growers. This process should be more efficient in handling grower appeals. The subcommittee, appointed by the Committee Chairman, will be comprised of two independent and two cooperative representatives, as well as a public member. Although an additional level of review is being established, it should be more efficient for a smaller subcommittee to consider grower appeals. The subcommittee will have 30 days to render a decision on each appeal.

If a grower is not satisfied with the appeal subcommittee's decision, that grower could further appeal to the full Committee. The grower would submit his or her written argument to the Committee along with any pertinent information for the Committee's review within 15 days after being notified of the subcommittee's determination. The Committee will have 15 days from the receipt of the grower's appeal to respond. The Committee will promptly inform the grower of its decision, including the reasons for its decision.

The grower may further appeal to the Secretary within 15 days after notification of the Committee's findings, if the grower is not satisfied with the Committee's decision. The Committee will forward a file with all pertinent information related to the grower's appeal. The Secretary will inform the grower and Committee staff of the Secretary's decision. All decisions by the Secretary will be final.

This rule revises § 929.125 of the order's rules and regulations to implement the Committee's recommendation, consistent with the proposed rule published on May 30, 2000.

Suspension of Deadline for Notifying Growers of Their Annual Allotment

Section 929.49 of the order provides that in any year in which an allotment percentage is established by the Secretary, the Committee must notify growers of their annual allotment by June 1. That section also requires the Committee to notify each handler of the annual allotments for that handler's growers by June 1.

The May 30 proposed rule proposed establishing a marketable quantity and allotment percentage for the 2000 cranberry crop. To allow adequate time for interested parties to comment on the proposal and for the Department to give due consideration to the comments received, it was determined that a final decision on the proposed rule would not be reached before June 1. Therefore, the Department proposed that the June 1 deadline be suspended for the 2000–2001 crop year.

This rule suspends the June 1 date appearing in § 929.49 of the order as proposed on May 30, 2000.

Removal of Two Obsolete Regulations

At its June 6, 2000, meeting, the Committee discussed two of the order's rules and regulations that are now obsolete, and unanimously recommended that they be deleted. Those sections are *§ 929.109 Unusual*

circumstances as used in determining base quantities and *§ 929.151 Allotment transfers and disposition of the growers annual allotment certificate*.

Both of these sections pertain to the ''base quantity'' method of producer allotment, which was replaced in 1992 with the sales history method of producer allotment. These sections were inadvertently left in the regulations and do not apply to the sales history program.

Removing these sections from the order's rules and regulation will reduce confusion to the cranberry industry. Therefore, this rule removes §§ 929.109 and 929.151 from the rules and regulations in effect under the order.

Regulatory Flexibility Act & Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action and alternatives considered on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions, in order that small businesses are not unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Accordingly, AMS has prepared this final regulatory flexibility analysis.

According to the Small Business Administration (13 CFR 121.201) small handlers are those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those with annual receipts of less than $500,000. Because prices have declined significantly in the past year, and because the small farm definition is based on estimated sales, nearly all producers and some handlers are considered small under the SBA definition. Therefore, this RFA analysis is properly applicable for the entire industry. Of the 1,100 cranberry growers, between 86 and 95 percent are estimated to have sales equal to or less than $500,000. Fewer than 60 growers are estimated to have sales that would have exceeded this threshold in 1999. Thus, the consequences of this final action apply to virtually all growers.

Over two-thirds of the U.S. cranberry crop is handled by a grower-owned marketing cooperative. Five other major processors, together with the cooperative, handle over 97 percent of the crop. Using Committee data on volumes handled, AMS has determined that none of these handlers qualify as small businesses under SBA's definition. The remainder of the crop is marketed by about a dozen grower-handlers who handle their own crops. Dividing the remaining 3 percent of the crop by these grower-handlers, all would be considered small businesses.

This action makes the following amendments to the regulations under the cranberry marketing order: (1) revises the calculation of sales histories; (2) exempts fresh and organic fruit; (3) includes a definition of State average yields; (4) changes volume needed to qualify as commercial production; (5) revises Committee review procedure for determination of sales history; (6) suspends that annual allotment notification date; and (7) establishes levels of marketable quantity and allotment percentage to determine the level of volume control.

Most of the changes as a result of this final rule are expected to have little or no regulatory burden on industry, or are made expressly to acknowledge problems faced by new producers and producers with new acreage. The revisions to calculating sales histories will benefit new growers or those who want to enter cranberry production. The exemption for fresh and organic cranberry sales should help those two niche markets continue to develop. Recalculating the number of barrels needed to qualify for commercial production will enable new growers to use the revised sales history calculation to obtain a higher sales history. Before assessing the impact of volume control on the industry, an economic profile of the cranberry market conditions is provided.

Industry Profile

Cranberries are produced in 10 States, but the vast majority of farms and production is concentrated in Massachusetts, New Jersey, Oregon, Washington, and Wisconsin. Massachusetts was the number one producing State until 1990, when Wisconsin took over the lead. Since 1995, Wisconsin has been the top producing State. Both States account for over 80 percent of cranberry production. The industry has operated under a Federal marketing order since 1962.

Average farm size for cranberry production is very small. The average across all producing States is about 33 acres. Wisconsin's average is twice the U.S. average, at 66.5 acres, and New Jersey averages 83 acres. Average farm size is below the U.S. average for Massachusetts (25 acres), Oregon (17 acres) and Washington (14 acres).

Small cranberry growers dominate in all States: 84 percent of growers in Massachusetts harvest 10,000 or fewer barrels of cranberries, while another 3.8 percent harvest fewer than 25,000 barrels. In New Jersey, 62 percent of growers harvest less than 10,000 barrels, and 10 percent harvest between 10,000 and 25,000 barrels. More than half of Wisconsin growers raise less than 10,000 barrels, while another 29 percent produce between 10,000 and 25,000 barrels. Similar production patterns exist in Washington and Oregon.

Over 90 percent of the cranberry crop is processed, with the remainder sold as fresh fruit. In the 1950s and early 1960s, fresh production was considerably higher than it is today, and in many years, constituted as much as 25–50 percent of total production. Fresh production began to decline in the 1980s, while processed utilization and output soared as cranberry juice products became popular. Today, fresh fruit claims only about 5–6 percent of total production. (Typically, ''shrinkage'' absorbs the remaining 3 percent of production.) Three of the top five States produce cranberries for fresh sales. New Jersey and Oregon produce fruit for processed products only.

Historical Trends and Near Term Outlook

Production has risen steadily since the early 1950s, as more acreage was brought into production and yields increased. Cranberry output first exceeded 1.5 million barrels in 1966, 3 million barrels in 1982, 4 million in 1988, and hit a record 6.4 million barrels in 1999. Acreage rose 62 percent since 1954, from just under 23,000 acres to 37,200 acres. Output growth was also fed by soaring yields—a 288-percent increase from 44.3 barrels per acre in 1954 to almost 172 barrels in 1999.

The industry enjoyed healthy increases in demand as a result of new juice drink products, which in turn prompted expansion in acreage and output. Demand peaked in 1994 with per capita consumption of processed berries at 1.7 pounds and has since declined, to 1.6 pounds in 1998. Prices above $60 per barrel in 1996 and 1997 continued to stimulate output. As a result, inventories began building. Over the period 1954–1969, carryover averaged 222,179 barrels, about 19 percent of annual average production. During the 1970s, annual production rose nearly 90 percent from 1954–69, and carryover stocks rose to about 29 percent of annual average production during the decade. Carryover as a percent of output fell back to 19 percent during the 1980s. The 1990s have seen

both large output increases and carryover stocks. For 1990–99, beginning inventories rose to a level equal to nearly a third of annual production over the decade. In 1999 alone, carryover swelled to more than 3.1 million barrels, equivalent to 49 percent of the year's crop. Current estimates of beginning stocks are for a record 4.6 million barrels at the start of the 2000/2001 marketing year—equivalent to 78 percent of anticipated production. With no significant increases in demand or cutbacks in production, at the end of the 2000/2001 marketing year, there could be nearly a full year's production in storage (5.25 million barrels) to start the 2001 marketing season. Table 1 provides indicators of average annual carryover, production, and prices.

The value of utilized production increased steadily from 1974 to 1986, dipped 9 percent in 1987, then began a more volatile but still upward trend through 1997 before plunging 40 percent in 1998. Prices per barrel over the 1979–98 period averaged $44.375, but dropped below $40 a barrel for 1998 crop berries, and could fall below $20 for the 1999 crop. For the 2000/2001 marketing year, some handlers have indicated they may only offer $9–$10 per barrel. If prices do not exceed $20 per barrel in 1999, the value of utilized production will decline again by half—from $211 million estimated for the 1998 crop to less than $110 million in 1999. This would be the lowest crop value since 1981.

Impact of Volume Control

The volume control for cranberries imposes no restrictions on entry into production. For example, there is no quota such as used in the tobacco industry that a new entrant would have to acquire from an existing quota holder. The impact of volume control is evaluated relative to the income effect that excessive inventories would otherwise exert on growers and the likelihood that, without significant improvement in either prices or sales or both, many growers will not be able to remain in business.

Because inventories are large and cranberries may be stored for long periods without deterioration, producers may not receive full payment for cranberries delivered to storage for several years; and storage costs are deducted from their final payment. In addition, reports from various growers estimate current total costs of production at approximately $30–$35 per barrel. With expectations of prices declining well below this range in the 1999 marketing year, most producers are not expected to cover variable costs of production, thus increasing the likelihood they will either exit the industry or abandon bogs until the market situation improves.

The effect of the Committee's revised volume control recommendation (CMC2) contained in this final action may be evaluated in terms of the loss of sales that producers incur as a result of volume control, compared with the extent to which price increases due to volume control offset that sales loss.

For the 15-percent volume control to be revenue-neutral—that is, to leave producers on average no worse off with respect to revenue realized from lower production—prices would need to rise by 17.7 percent in 2000/01. An alternative allotment percentage that was considered by the Committee would have resulted in a volume control of 29 percent. A 29-percent volume control would require prices to rise by 40.8 percent to remain revenue-neutral. In both cases, a lesser price increase results in a gross revenue loss to producers. In and of itself, this would not necessarily mean that volume control should be rejected as a marketing tool. Even if prices do not rise, producers realize some savings from production costs not incurred and from higher prices that may result in subsequent marketing years as a result of lower inventories.

Economic analyses of factors affecting cranberry prices have been conducted by Sexton, Jesse, and USDA in 1999 and 2000. All of the analyses reported positive price impacts associated with a 100,000 barrel change in supply, ranging from $0.49–$1.26 per barrel for each 100,000 barrel change. Because inventories are so large, this analysis uses the lowest reported price impact, of $0.49 for each 100,000 barrel change, or $4.89 per barrel for a change of 1 million barrels. Thus, if inventories decrease (increase) by 1 million barrels, prices are estimated to increase (decrease) by $4.89 per barrel. In the aforementioned economic analysis, prices averaged $27.695 per barrel over the period analyzed from 1954 to 1998. The estimated price impact of $4.89 per barrel represents a 17.7 percent change in prices compared with the average over the 45-year period.

The 15-percent volume control is estimated to lead to a reduction in inventories by 884,000 barrels, based on a 2000/2001 domestic production forecast of 5.89 million barrels (prior to the 15-percent volume control). This reduction in inventory is estimated to increase prices by $4.32 per barrel (.884 × 4.89). Using a projected 2000/01 average price of $20 per barrel, prices are estimated to increase to $24.32 per barrel. Thus, a grower who reduced output from 1,000 to 850 barrels would realize a gain in revenue from $20,000 to $20,672 or 3.4 percent. Some additional gain would be realized from cost savings from 150 barrels that were not produced. And, the volume reduction would be expected to generate price increases in future years, providing cumulative positive effects from the volume control.

The results of econometric analyses are subject to some level of uncertainty. Results are generally reported as estimates subject to a specified error. Assuming a 5 percent error to illustrate the sensitivity of the results, the $4.89 per barrel price change estimate could range from $4.65 to $5.14 per barrel. Then, a reduction in inventory of 884,000 barrels would lead to higher prices ranging from $4.11 to $4.54 per barrel. Table 2 illustrates these estimated price increases and their effect on producer revenue, using a forecast price for 2000/01 of $20 per barrel.

We conclude that the 15 percent volume control would not unduly burden producers, particularly smaller growers. While there would be a loss of salable product, producers are likely to benefit from the price-enhancing effect of the reduced inventories in 2000/01. If producers do not benefit in 2000/01, the reduction in inventory is expected to raise prices in future years which would provide cumulative annual effects. The estimated price increases reported here would mean higher prices for consumers. However, recent prices have been significantly higher than these estimated prices; thus the consumer price effect is still well below previous years' prices.

TABLE 1.—AVERAGE ANNUAL CRANBERRY OUTPUT, CARRYOVER STOCKS, AND PRICES

Indicator	1954–59	1960–69	1970–79	1980–89	1990–99	1954–99
Production (barrels)	1,083,217	1,234,610	2,221,610	3,303,050	4,656,500	2,622,983
Carryover (barrels)	213,746	227,239	644,720	617,897	1,506,718	679,309

TABLE 1.—AVERAGE ANNUAL CRANBERRY OUTPUT, CARRYOVER STOCKS, AND PRICES—Continued

Indicator	1954–59	1960–69	1970–79	1980–89	1990–99	1954–99
Carryover/Production (%)	19.7	18.4	29.0	18.7	32.4	25.9
Price per barrel ($)	10.74	13.09	15.13	43.16	46.80	27.695

TABLE 2.—ESTIMATED IMPACTS OF PRICE CHANGES ON A REPRESENTATIVE PRODUCER

Price estimates	Average price ($/barrel)	Total output (barrels)	Gross revenue
Base Case	$20.00	1,000	$20,000
Volume Control Cases:			
—$4.32 price rise ($4.89 × .884)	$24.32	850	$20,672
—$4.11 price rise ($4.89 reduced by 5% error, × .884)	$24.11	850	$20,494
—$4.54 price rise ($4.89 increased by 5% error, × .884)	$24.54	850	$20,859

Summary of Rule

In accordance with § 929.49 of the order, this rule establishes a marketable quantity of 5.468 million barrels and an allotment percentage of 85 percent for cranberries in the 10-State production area during the 2000–2001 crop year. Because the Department is making allowances for established growers with acreage with four years of sales histories or less, this rule also provides for an increase in the marketable quantity which may be needed to maintain the 85 percent allotment percentage. This action also revises procedures for calculating growers' sales histories, defines the State average yield, increases the barrels per acre for determining a commercial crop, exempts fresh and organic cranberries from volume regulation, and revises Committee review procedures. These actions are designed to improve cranberry marketing conditions and the operation of the volume regulation program.

The marketable quantity for the 2000–2001 crop year is established at 5.468 million barrels with an allowance for an adjustment to allow for the additional sales history calculation provision. This is equal to the expected demand for processing fruit. Fresh fruit sales were not included because fresh fruit is exempt from volume regulation. Organically-grown cranberries are also exempt because projected sales are only about 1,000 barrels. Using a marketable quantity equal to processed fruit demand should result in a more stable level of inventories. Supplies in inventory could easily cover any unexpected increases in market demand.

Section 929.49(b) provides that the marketable quantity be apportioned among growers by applying the allotment percentage to each grower's sales history. The allotment percentage equals the marketable quantity divided by the total of all grower's sales histories. No handler can purchase or handle cranberries on behalf of any grower not within the grower's annual allotment.

Total growers' sales histories were established by the Committee at 6.432 million barrels. Using the formula established under the order (5.468 million barrels divided by 6.432 million barrels), the annual allotment percentage is 85 percent. The order provides that a grower's sales history is established by computing an average of the best four years' sales out of the last six years' sales for those growers with existing acreage. Under this rule, growers with 5 years of sales history will use an average of their highest 4 years of sales. Growers with 6 or more years will use an average of their highest 4 of the most recent 6 years of sales. For growers with four years or less of commercial sales history, the sales history is calculated by using the highest single year of all available years of such growers' sales. New acreage with no sales history for both brand new and existing growers would receive a sales history using the State average yield or the total estimated commercial sales from that acreage, whichever is greater. If these growers also have newer acreage with four years of sales history or less, and such growers can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage shall be treated in the same manner as acreage of a grower with four years or less of sales history.

This rule changes the method of calculating sales histories for acreage with four years or less of sales. This rule should increase the amount of allotment available to growers with newer plantings. This is because a cranberry bog does not reach full capacity until several years after being planted. Using an average of early years' sales (which are low) normally results in a sales history below current sales potential. A more established bog, on the other hand, would have a sales history more reflective of his or her production capacity. The Committee recommended this adjustment be allowed only for growers who have no acreage with more than four years of sales. However, the Department is accommodating more established growers by making this calculation available to them as well.

Calculations of sales histories are made on ''commercial'' cranberry acreage. This rule raises the amount of barrels that defines a commercial crop under the order from 15 to 50 barrels. This action will assist growers who harvested cranberries for the first time in 1999. Such grower's first year of sales will not count if it was less than 50 barrels per acre. Instead, the grower will receive the same sales history as is provided to a grower with no sales history on his or her acreage (which is the State average yield or the grower's estimated commercial sales, whichever is greater). This will benefit growers who had very low yields per acre for their first year of production.

Growers with no sales history on their acreage receive the State average yield. This applies to both brand new growers and growers with sales history on some of their acreage. This rule defines the State average yield for the 2000–2001 crop as the average yields during the year 1997 or the average of the best four years out of the last six years, whichever is greater. This calculation is similar to that used to compute sales history (an average of the best four years out of the last six years), and should average out seasonal variations in yields. However, if estimated commercial sales are greater than what is computed above, the Committee will use the commercial sales estimated by the grower.

There is no need to limit the volume of cranberries that may be marketed in these noncommercial and noncompetitive outlets. Thus, this rule provides that handlers may dispose of excess cranberries in such outlets. Noncommercial outlets are charitable institutions and research and development projects for market development purposes. Noncompetitive outlets are non-human food use and foreign markets, except Canada.

This rule exempts fresh and organically-grown fruit from the volume regulation. This exemption is provided pursuant to section 929.58 of the order which provides that the Committee may relieve from any or all requirements, cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Fresh fruit accounts for about 4.7 percent of the total production. The Committee estimated that about 280,000 barrels will be sold fresh this year, compared to 260,000 barrels sold last season. Sales of organically-grown fruit are projected at only 1,000 barrels. These relatively small volumes of fruit do not contribute in any significant way to the current oversupply or inventory build-up. Therefore, there is no need to cover them under the volume regulation.

The sales history re-determination procedures are being modified by appointing a subcommittee composed of two independent and two cooperative representatives and one public member to be the first level of review.

Currently, section 929.125 provides an appeal procedure for growers with their sales history determinations. A grower may submit to the Committee a written argument within 30 days of receiving the Committee's determination for sales history, if such grower disagrees with the determination.

This rule establishes an appeals subcommittee as a more efficient way to consider grower appeals. Although an additional level of review is being established, it will be more efficient for a subcommittee composed of 5 members to discuss and decide on appeals. Scheduling a meeting of the entire Committee to discuss and make determinations of grower appeals is more cumbersome and time consuming.

Finally, this rule suspends the June 1 deadline for notifying growers and handlers of their annual allotments. This will allow for adequate time to complete this rulemaking proceeding, without unduly impacting the cranberry industry.

Alternatives Considered

1. Different Methods of Volume Regulation

Eight months ago, the Committee established a volume regulation subcommittee that researched the two methods of volume regulation available under the order. Those two methods are a producer allotment program and handler withholding program. The subcommittee's primary mission was to determine what method of volume control would be best for the industry if volume regulations were recommended. After holding several meetings, the subcommittee concluded that a producer allotment is the best method available to the industry at this time.

The withholding program has not been used since 1971. The provisions of the producer allotment program were amended in 1992, but never used. Under the withholding program, growers deliver all their cranberries to their respective handlers. The handler is responsible for setting aside restricted cranberries and ultimately disposing of the cranberries in authorized noncommercial and noncompetitive outlets. This could result in a large volume of cranberries being disposed of and perhaps destroyed. In addition, the withholding provisions require that all withheld cranberries be inspected by the Federal or Federal-State Inspection Service, which could be costly.

The producer allotment program allows cultural practices to be changed at the grower level prior to harvest. This could result in less fruit being produced and will not require the disposal of as many cranberries as with the withholding provisions. In addition, inspections are not required under the producer allotment method, which is more cost effective and simpler to administer. For these reasons, we conclude that the producer allotment program is the preferred method of volume regulation at the current time.

2. Other Alternatives Considered

One alternative to this regulation discussed at length by the Committee and the industry was not regulating at all. Economic reports of the condition of the cranberry industry indicate that if supplies are not controlled, grower prices will continue to drop. It will be difficult for small growers as well as large ones to sustain further price declines. Thus, the Committee discarded this alternative. AMS concurs.

Another alternative to regulation was to increase demand through market development activities rather than control supplies through regulation. A domestic promotion program is being considered by the Committee, in addition to the export promotion activities already underway. These efforts in market development and new product development can increase demand for cranberries and assist in addressing the oversupply situation. This, in conjunction with volume regulation, was determined to be the best course of action for the cranberry industry at this time. AMS concurs.

3. Calculation of Sales Histories and Varying Levels of Volume Regulation

In addition, the Committee considered alternative ways to calculate growers' sales histories and different levels of regulation. These are discussed in more detail in the section of this document entitled ''Analysis of Comments.''

A grower's annual allotment is established by applying the allotment percentage to that grower's sales history. Several alternative methods of calculating sales histories were considered, primarily to mitigate the situation where newer growers (those with few years of sales history) would be more dramatically impacted by volume regulation than more established growers.

One change recommended by the Committee increases the number of barrels that defines commercial acreage. This change will allow growers who had a small initial crop in 1999 to market their entire 2000 crop (since they will receive as their sales history the State average yield). This should assist growers in their second year of production, without dramatically increasing the total industry sales history.

The Committee also considered a change proposed by USDA to allow every grower to use his or her best single sales year out of the last six years as that grower's sales history. This change would have increased the industry total by a substantial amount (about 20 percent), and would have resulted in either a much higher restricted percentage or marketable quantity (see the following discussion of USDA Options 1 and 2). This alternative was rejected as not being in the best interest of most cranberry growers.

The Committee ultimately recommended that growers with four years or less of sales history receive their highest year of sales as their sales history. This rule adopts this recommendation. It will result in a higher allotment for these growers than would be obtained by averaging all their available sales years. This will mitigate

the impact of the restricted percentage on growers with relatively new acreage, without increasing the marketable quantity by a significant amount. In the case of growers with five years of sales, the Committee recommended their sales history be computed using an average of the highest four years of sales. For growers with six or more years of sales history, a sales history will be computed using an average of the highest four of the most recent six years of sales. Growers (both new and established growers) having new acreage with no sales history will get the State average yield or estimated commercial production, whichever is greater. This rule also adopts these recommendations. In addition, based on concerns expressed during the June 6 Committee meeting and in comments, the Department added a provision to this regulation which applies to established growers with newer acreage having four years of sales history or less.

The following three levels of volume regulation were also considered (in addition to that finally recommended by the Committee).

Initial Committee Recommendation (15% volume control; sales history—6.35 million barrels; marketable quantity—5.4 million barrels): This alternative was rejected because it does not take into account the additional sales histories being granted to newer cranberry growers as described above.

USDA Option 1 (29% volume control; sales history—7.6 million barrels; marketable quantity—5.4 million barrels): This option was rejected because it almost doubled the restricted percentage (from 15 to 29 percent) recommended by the Committee and anticipated by the industry. As previously stated, this would require prices to rise by 40 percent to remain revenue-neutral for growers.

USDA Option 2 (15% volume control; sales history—7.6 million barrels; marketable quantity—6.46 million barrels): This option dramatically increases the marketable quantity above anticipated market demand. Thus, it would have the same impact as no volume regulation and is therefore rejected.

Reporting and Recordkeeping Requirements

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0103.

There are some reporting and recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. This rule does not change those requirements.

Opportunity for Public Participation in the Rulemaking Process

The Committee's meetings were widely publicized throughout the cranberry industry and all interested persons were invited to attend them and participate in Committee deliberations. Like all Committee meetings, the March 30 and June 6 meetings were public meetings. Press releases were issued announcing the meetings and setting forth the agenda. Meeting announcements were also placed on a website specifically designed for the cranberry industry. All interested parties were invited to attend. All entities, both large and small, were able to express their views on these issues by attending the meetings or contacting their Committee representatives about their concerns prior to the meetings. Subsequent to the publication of the proposed rule on May 30, AMS mailed a copy of that rule to every cranberry grower and handler of record. That mailing also invited interested parties to attend the June 6 meeting and express their views. Additionally, AMS posted a summary of what transpired at that meeting (as well as a full transcript of the meeting) on its website and included it in the rulemaking record. The Committee itself is composed of eight members, of which seven members are growers and one represents the public. Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations. The Committee manager also held several meetings with growers throughout the production area to discuss the methods of volume regulation and the procedures for regulation.

A proposed rule concerning this action was published in the **Federal Register** on May 30, 2000 (65 FR 34411). Copies of the rule were mailed to all known cranberry growers in the production area. Also, the rule was made available on the Department's website. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 15-day comment period ending June 14, 2000, was provided to allow interested persons to respond to the proposal.

Analysis of Comments

A total of 131 comments were filed in response to the May 30, 2000, proposed rule by 125 individuals (4 persons submitted 2 and one individual submitted 3 comments). By far, the majority of commenters were cranberry growers. The six major cranberry handlers also commented, as did the Committee, three U.S. Congressmen, the New Jersey Department of Agriculture, and an attorney representing two cranberry processors. Sixty-nine comments were opposed to a volume regulation in general or opposed to a specific portion of the proposal. Fifty-six comments favored one of the options under consideration. A number of comments addressed the fresh fruit exemption. Also, James M. Talent, Chairman of the U.S. House of Representatives' Committee on Small Business commented that AMS did not prepare a sufficient regulatory flexibility analysis in the proposed rule published on May 30, 2000.

Main Arguments Against Establishing a Volume Regulation

Sixty-nine comments opposed establishing a volume regulation for the 2000–2001 crop year. Following is a discussion of the six main arguments against volume regulation.

1. The 15 Percent Volume Control Will Have Little or No Impact on the Oversupply

Many commenters believed that a 15 percent reduction will have little or no impact on improving the market or reducing the large inventories.

The producer allotment program is a tool available to the cranberry industry to use in time of need. In their consideration of this issue, agricultural economists who have studied the program concluded that volume regulation is one avenue available to the industry that can help stabilize prices and shorten the period of oversupply. Economists have addressed the Committee and indicated that grower prices will further plummet if some type of action is not taken to decrease the

oversupply. It was also reported to the Committee that if volume regulation is implemented, a 100,000 barrel reduction in carryover inventory would result in a price increase ranging from $0.49 to $0.73 per barrel, while a 1,000,000 barrel reduction in inventories would result in a price increase of $4.89 to $7.26 per barrel.

It may be true that an 85 percent allotment percentage will not dramatically drive up grower prices. However, the Committee has communicated with a vast number of growers and determined that an allotment percentage lower than 85 percent would not be supported for the first year of volume regulation. By establishing a less restrictive percentage this year, growers will be eased into the mechanics of the program operations. Also, this volume regulation could be successful in stopping the decline of prices. The Committee and the industry are aware that the surplus situation cannot be resolved in one season or by volume regulation alone. It is possible that volume regulation may have to be instituted again in future years. However, that decision would be made on an annual basis.

The marketing order is only one tool the Committee has decided to use to assist in reducing the oversupply. The establishment of a domestic generic promotion program to increase the awareness and consumption of cranberries has also been recommended. The Committee is currently in the developmental stage of implementing such a program. The Committee is also involved in an export program using Marketing Access Program funds with USDA's Foreign Agricultural Service. Individual handlers have also taken steps to develop new products and expand foreign and domestic markets.

2. It Is Too Late in the Year To Establish Volume Regulation

Some commenters believed that the regulation is being implemented too late for the upcoming season, and growers do not have time to adjust cultural practices to reduce production and associated costs.

Many growers have been aware for months that a volume regulation has been under consideration by the Committee and USDA. The Committee has been discussing the implementation of volume regulations for this season for more than eight months. In addition, all Committee meetings, including the March 30 and June 6, 2000, meetings were public meetings, widely publicized throughout the industry. All interested parties were encouraged to attend. The Committee manager also held several meetings with growers throughout the production area to discuss the possible implementation of volume regulation for the 2000 crop.

In anticipation of a volume regulation, many growers have been taking steps to prepare for a 15 percent crop reduction. Information received by USDA indicates that there are still steps growers can take to minimize production costs. Some examples are that bogs can be flooded, and chemical applications and bee pollination can be curtailed. Also, as previously discussed, handler costs associated with the storage of excess inventories (which are ultimately passed on to growers) would be reduced.

We agree that it would have been preferable for this rule to be recommended and implemented at an earlier date to provide more time for growers to prepare for a volume regulation. However, this did not happen for several reasons. The last time volume control was imposed under the order was approximately 30 years ago. Difficulties were encountered in arriving at the most fair method of calculating grower sales histories in order to achieve (within the order's current parameters) an equitable apportionment of allotments among producers. And finally, although the Committee recommended volume control and, along with USDA, proposed regulations to implement such control, the industry is not unified in its support of the proposals. Nevertheless, there is overall agreement that volume controls need to be implemented, and USDA concludes that the implementation of volume control as set forth in this regulation is an important step to take in addressing the oversupply situation and resultant low grower returns.

3. The Proposed Calculation of Sales Histories Does Not Treat Growers Equitably

Many comments expressed concerns about the determination of sales histories, particularly that growers with four years or less of sales histories would be more dramatically impacted than others. The commenters stated that the reduction for these growers could exceed 15 percent by a substantial amount. Some suggested that these growers receive the State average yield as their sales history, similar to the method used to provide sales histories for growers with new acreage.

The Committee and the Department have been working for many months now to develop a way to calculate sales histories which would result in the most equitable allocation of allotment among growers in the cranberry industry as it exists today. The primary concern has been with growers with four years or less of sales history. In response to this concern, USDA's proposed recalculation of sales histories which modified the Committee's initial recommendation was intended to mitigate some of the perceived inequities that could arise. In its second recommendation, the Committee further recommended that the formula be changed so that growers with four years or less of sales be given their highest year of sales as their sales history. Growers with five years of sales or more would still have their sales history calculated by averaging the highest four years of sales during the most recent five or six years of sales, whichever is applicable.

This Committee recommendation is expected to help some growers with newly planted acreage. Instead of using an average of all years' sales, which could be lower on newer acreage, these growers can use their best year as their sales history. Most likely, with newer acreage, the last year of production will be the best year and will raise such growers' sales histories (over the current method of averaging all available years of sales).

Another concern was that the Committee's recommendation is not equitable for more established growers who have put in new acreage. Any grower who reports to the Committee that he or she has new acreage coming into production for the first time receives the State average yield as the sales history for that acreage. In that case, the established grower is treated in the same manner as a brand new grower. Once the new acreage starts producing cranberries, the grower reports to the Committee sales off all acres combined. Information reported to the Committee does not segregate sales by the age of the acreage. The combined sales are thus used in calculating the more established growers' sales histories (using an average of the best four years out of five or six). Since the sales are not separated, the Committee did not recommend making an adjustment for acreage belonging to an established grower that has been producing for four years or less. Nevertheless, based on concerns and comments expressed during this rulemaking proceeding, USDA has decided to allow such an adjustment if growers can produce credible records which would allow the Committee to segregate the newer acreage.

The Committee and USDA have worked diligently to ensure that all growers would receive a sales history that accurately represents each grower's

capability to produce on such acreage while still being an effective regulation. The various recommendations, although not perfect, were intended to achieve the most fair method of computing sales histories, which would result in allotments being equitably apportioned among producers.

The allotment calculation in this rule is based on prior years' histories. There are no barriers to entry into the cranberry growing or handling business under the marketing order nor should there be any. In the early 1990's, the order was amended to change the producer allotment program from the base quantity to the sales history method. The program amendments were put in place after a public hearing and grower and processor vote. However, this is the first time the sales history program has actually been implemented. The Committee and USDA have discovered some areas of the order provisions that could to be improved for future seasons. The Committee is currently considering needed order amendments, which would likely be necessary to make any substantive changes in the sales history provisions of the order.

4. Only Two Handlers Are Responsible for the Surplus

Many growers commented that their handlers are not responsible for the surplus, since two of the largest handlers maintain the largest inventories.

Review of this available information shows that the volume of inventories of these two handlers is directly proportional to the volume of cranberries handled. In addition, the increased plantings over the last few years, which have contributed to the surplus, was industry-wide. Regardless, the cranberry surplus is an industry problem, since large inventories depress overall grower prices. The marketing order's volume regulation features are designed to help all growers in the industry by stabilizing grower returns.

5. Handlers With No Inventories May Have To Purchase Cranberries From Their Competitors To Fill Orders

Some handler commenters said that with a restriction in place, they would have to purchase cranberries from their competitors to supply their customers since they do not have inventories like other handlers. Purchases among handlers is a standard practice in the cranberry business. With the surplus, there should be an abundance of fruit available for sale at a reasonable rate in the event handlers need additional product. In addition, one such commenter stated that they routinely purchase a large percentage (20–30%) of their cranberries from other handlers rather than directly from growers. The purpose of the volume regulation is to benefit the grower by stabilizing the marketplace. If handlers must purchase cranberries from other handlers, and inventories are reduced, the volume regulation is working. In addition, if a handler has excess cranberries, any unused allotment forfeited to the Committee will be equitably distributed among the remaining handlers.

6. The Regulation Will Encourage Plantings and Exports From Canada

Some commenters were concerned that Canada's cranberry industry could have a dampening effect on any volume regulation implemented in the United States. The marketing order regulates domestic cranberry handlers. Although any volume regulation implemented cannot extend to Canada, the British Columbia Cranberry Committee has voted to reduce their 2000 crop by 15 percent if volume regulations are implemented in the United States.

The Committee reported 1999 Canadian fruit production at 634,000 barrels of cranberries. A substantial portion of the Canadian fruit is grown in British Columbia. If volume regulation is instituted in Canada, growers will not be encouraged to plant new vines. Also, with the current U.S. surplus of cranberries, there are ample domestic supplies of fruit, which, along with current low grower prices, should discourage the importation of foreign fruit.

Discussion of Alternative Levels of Volume Regulation

Fifty-six of the comments supported volume regulation in general, many of those favoring one of the options under consideration over the others. Some of those who opposed volume regulation indicated which option they preferred if USDA does implement a regulation.

Initial Committee Recommendation (15% volume control; sales history—6.35 million barrels; marketable quantity—5.4 million barrels): Few comments were received in support of this option. Those in support commented that this was the most equitable option and the Committee's original recommendation should be adhered to. One commenter favored the initial Committee recommendation because he believed that the two alternatives offered by USDA favored certain growers over others. The calculation of sales histories using the average of the best four out of six years was favored by these commenters.

USDA Option 1 (29% volume control; sales history—7.6 million barrels; marketable quantity—5.4 million barrels): Some commenters who discussed this option were against volume regulation but believed this would be the best if volume regulation were implemented. This option would have established a restricted percentage of 29 percent. Those supporting this option believed that a 15 percent reduction does not go far enough and will not have an impact on the surplus. One commenter stated that the volume regulation should be restrictive enough to make a difference. Some commenters believed that a 29 percent reduction is necessary if the oversupply situation is to be seriously addressed. One commenter stated that this is the best opportunity to return market prices to a level that will allow growers to break even this year, after heavy losses in 1998. This commenter further stated that this regulation will not raise consumer prices but will allow the industry to avoid incurring costs of delivering, cleaning, freezing, and storing cranberries only to have them be sold at a loss. Others commented that allowing all growers to use the best single sales year out of the last 6 years as a sales history was preferable to using an average.

Those opposed to USDA Option 1 stated that it would cause hardships for growers. Most of those commented on the negative impact a volume reduction exceeding 15 percent would have on many growers. One commenter stated that growers will be unduly disadvantaged by a 71 percent producer allotment because many growers have already incurred production costs at levels designed to target a reduction of 15 percent of the average of the best 4 out of 6 years. This commenter further stated that growers who have produced consistent crops for six years would see their volume reduction double. According to this commenter, this option overinflates sales histories to 7.6 million barrels, which would cause a doubling of the restriction in order to maintain a reasonable marketable quantity. Using the best year of 6 will alter the sales histories of virtually all growers.

Many commenters did not support using the best year of the last 6 to calculate sales histories for all growers (except those with new acreage) because it rewards growers who have contributed most to the current oversupply. Some felt this method of calculating sales histories was too advantageous for newer growers, and those who have expanded their acreage in recent years.

USDA Option 2 (15% volume control; sales history—7.6 million barrels; marketable quantity—6.46 million barrels): Comments in support of this option believed that it was the most equitable of all options. Some commented, however, that it still did not go far enough on how newer growers will be allocated allotment. One comment in support of the option stated handlers should not be allowed to transfer unused allotments to other growers.

One supporter believed that unlike the Committee option, this was a good faith attempt to determine grower sales histories in an equitable fashion. This supporter further stated this option will have a similar impact on the entire industry, whereby most growers' actual crop reduction will be closer to 15 percent. This commenter added that because it does not result in significant differences in allotments, it better complies with the Act regarding equitable apportionment of allotments.

Those opposed to this option were generally opposed to both USDA options as they relate to the calculation of sales histories. As with USDA option 1, some commenters believed the method of calculating sales histories under this option was too advantageous for newer growers. One commenter believed that raising the marketable quantity to 6.35 million barrels (USDA Option 1) was unrealistic and, therefore, the volume regulation would have no effect on reducing supply.

Revised Committee Recommendation (CMC2) (15% volume control; sales history—6.432 million barrels; marketable quantity—5.468 million barrels): Comments submitted on CMC2 (following the June 6 public hearing) in support of this option believed that this was the best option to bring market stability and reduce costs. While it would not have an equal impact on each individual grower, it would help the industry overall. Some stated that a 15% restriction will not eliminate the surplus, but believed that it will allow handlers to begin the process of balancing supply and demand. Many commented that the marketable quantity should be near 5.4 million barrels to be effective. Some were supportive of any proposal that limits the marketable quantity to approximately 5.4 million barrels, and believed calculating sales histories for established growers using the best 4 years out of 6 was the best method. Some supported CMC2 even though USDA option 1 would have a greater impact on reducing the surplus. They believed CMC2 would be best for the long-term interests of the industry.

One commenter stated that he could deliver 3000 more barrels under USDA option 2, but still supported CMC2 as being best for the industry overall.

Those opposed to CMC2 stated that this option is grossly inequitable. One commenter stated that under both Committee recommendations, some growers would see a small reduction but others would be forced to dump up to 50 percent of this year's crop. This commenter stated that the Committee presented CMC2 as a compromise, but it is not. The commenter stated that this option does nothing to remedy the inequities of the first Committee recommendation, and only creates additional inequities. This commenter further stated that this option would reward growers growing for 4 years or less and punish established growers that have added new acreage.

Conclusions: Since the Committee's meeting on March 30, 2000, the Department received additional information from cranberry growers and handlers pertaining to the way in which sales histories are computed. Of primary concern were the potential inequities that could result from the Committee's initial recommendation. Specifically, some were concerned about growers with four years or less of sales histories on some or all of their acreage. The Department suggested two alternative levels of volume regulation in an attempt to address those concerns, with the expectation that the Committee would meet and discuss all options and recommend any needed revisions prior to finalization of the rule. The Department looked for flexibility in the marketing order that would assist this segment of the industry while still providing for an effective volume regulation.

The Department's options changed the way in which nearly all growers would calculate their sales histories. Under USDA Option 1, the sales histories would have increased to 7.6 million barrels (as opposed to the Committee's established sales histories of 6.35 million barrels). Using the Committee's recommended marketable quantity of 5.4 million barrels resulted in an allotment percentage of 71 percent. USDA Option 2 increased the marketable quantity to 6.46 million barrels (as opposed to the Committee's established marketable quantity of 5.4 million barrels) to stay within the Committee's original recommendation to establish an allotment percentage no lower than 85 percent. The Department recognized that the proposed rule provided a wide range of possible methods of implementing volume regulation for the industry to consider.

At the June 6 meeting and in written comments, it was expressed that both USDA options dramatically inflate the sales histories and USDA option 2 further provides an unrealistic marketable quantity. To demonstrate the unrealistic marketable quantity in USDA option 2, a commenter stated that the marketable quantity established in CMC2 (5.468 million barrels) represents a 10 percent increase in demand in one year. The largest increase in annual demand in recent years has been only about 5 percent. Further, the 6.46 million barrel marketable quantity in USDA option 2 exceeds anticipated production by over a half a million barrels. USDA Option 2 would, therefore, result in no reduction of available supplies. It would thus be an ineffective regulation and would provide no benefits to cranberry growers. We therefore concur with the Committee and comments received that USDA Option 2 should not be implemented.

Also, based on Committee meetings and comments received, we agree that USDA Option 1, which would establish an allotment percentage of 71 percent, would not be prudent at this time. For months, many growers have anticipated a volume regulation and believed it would not entail a reduction of more than 15 percent. Many growers altered their cultural practices accordingly. Establishing a reduction of more than 15 percent so close to the beginning of the season would cause too many hardships on too many growers. Although an 85 percent allotment percentage would have a lesser impact on supplies and prices than a 71 percent allotment percentage, we conclude that doubling the restriction from what was anticipated would be too costly to growers.

Both USDA options changed the way sales histories are calculated by allowing virtually all growers to use the best year of production. The primary concern of the Committee and industry was the method of establishing sales histories for growers with new acreage. We agree with the Committee that this method would overinflate total industry sales histories. The calculation for more established growers (using the average of the best four out of six years) has been in effect for many years and provides a reasonable and accurate sales history for these growers.

Additionally, the Committee is continuing its work on amending the order to address some of the problems it has encountered while considering volume regulation for the 2000–2001 crop year.

For these reasons, the Department has concluded that implementing CMC2, the Committee's recommendation of June 6, 2000, is the best course of action. It provides the most equitable means of allocating producer allotments available at this time, and should provide benefits to growers in excess of its costs. The only change the Department is making is allowing established growers who also have newer acreage with four years of sales history or less to receive the highest sales season on that acreage. Because this change will cause an increase in the marketable quantity if established growers can segregate production from their newer acreage, a change has also been made in § 929.250 of the regulations to reflect this adjustment.

Fresh and Organic Fruit Exemption

Fresh and organically-grown fruit are exempt from the volume regulation pursuant to § 929.58 of the order which provides that the Committee may relieve from any or all requirements cranberries in such minimum quantities as the Committee, with the approval of the Secretary, may prescribe.

Many comments were received regarding the fresh and organic cranberry exemption. Twenty-seven comments were against the exemption, primarily the fresh fruit exemption. Those in opposition were generally concerned that fresh fruit handlers are being given an unfair advantage as they will be in a position to make unused allotments from fresh growers available to their processed growers and virtually market all of their cranberries. Some commented that much of the fresh fruit excess would end up in the processed markets. In addition, some commented that the fresh market would be oversupplied with fresh cranberries and the quality would suffer, as well.

Five of the 27 who oppose the exemption commented that if the fresh fruit exemption is part of the regulation, any unused allotment realized from fresh fruit acreage should be forfeited in the same manner as with new growers who use the State average yield as their sales history and forfeit unused allotment.

Twelve comments supported the exemptions. In most cases, the commenters supported a specific option or volume regulation in general, including the fresh and organic exemption. One comment was against any volume regulation, but stated that if one is implemented, the fresh exemption should be a part of it.

The supporting commenters expressed that fresh and organic cranberries are small, but important segments of the overall cranberry market, and do not contribute to the oversupply situation. Because there is adequate demand for these products, one commenter stated that it does not make sense to restrict the volume of fresh cranberries that can be sold profitably. Another commenter stated that fresh fruit production requires special cultural practices that need to be implemented over the course of several growing seasons to transition the cranberry vines from processed fruit production to fresh fruit production. For this reason, it is unlikely that growers who normally produce cranberries for the processed market will become fresh growers during the 2000–2001 crop year. In addition, this commenter expressed that it would be unlikely for growers to market their excess fruit as fresh product for logistical reasons.

The Department supports the fresh and organic exemption. As stated previously, fresh fruit accounts for about 4.7 percent of the total production. Organically-grown cranberries comprise an even smaller portion of the total crop than fresh cranberries, about 1,000 barrels.

Under current marketing practices, there is a distinction between cranberries for fresh market and those for processing markets. Cranberries intended for fresh fruit outlets are grown and harvested differently. Most fresh cranberries are dry picked while cranberries used for processing are water picked. When cranberries are water picked, the bog is flooded and the cranberries that rise to the top are harvested. During this proceeding, it was noted that in the State of Wisconsin, cranberries for fresh market are water picked much like cranberries for processing. Additional information revealed that although cranberries intended for fresh market can be water picked, the resulting yields are more similar to the labor intensive dry picked cranberries, than to cranberries that are water picked for processing. This is partially attributable to the fact that only the highest quality fruit is earmarked for the fresh market.

Regarding the comments that many growers will become ''fresh growers'' and flood the market with fresh fruit, information received does not support that this will happen. Industry members advised that it takes many years to cultivate an acceptable ''fresh'' product. Handlers would not likely buy fresh cranberries from a first year fresh grower, as it would be expected the quality would not be acceptable. For these reasons, it would not be practical or economically feasible to convert from a processed grower to a fresh grower this season.

Regarding the comments that fresh cranberries will be diverted into processing outlets, safeguards are established under the program to protect against this. The exemption for both fresh and organic cranberries applies to cranberries packed in consumer packaging, such as cellophane bags for supermarkets. Any sorted-out cranberries converted to processing will count against that grower's allotment.

The Committee has deliberated for over eight months to arrive at a volume regulation recommendation that addresses the oversupply situation and is acceptable to most of the industry. The Committee recognizes that some improvements could be made in the way volume regulations are implemented, but it is impossible to make many more changes in time for the 2000–2001 crop year.

One idea that has been discussed, for example, is to amend the marketing order to provide that fresh and organic sales be segregated from processed sales, and allotment only be earned on the processed sales. The suggestion that fresh and organic cranberry growers forfeit any unused allotment is also an idea that could be considered in the future. The formal rulemaking process, which involves a hearing and grower referendum, usually takes 12 to 18 months to complete.

If the fresh or organic markets show significant growth in the coming years, and surplus becomes an issue, different measures can be taken at that time to include them in any volume regulation.

The Department supports the decision to exempt fresh and organically-grown cranberries from volume regulation this year. It is concluded that fresh and organic supplies do not contribute significantly to the current cranberry surplus, and that such cranberries should therefore be exempt from the allotment percentage this rule imposes.

Initial Regulatory Flexibility Analysis

James M. Talent, Chairman of the U.S. House of Representatives' Committee on Small Business commented that the proposed rule issued by AMS apparently did not comply with the Regulatory Flexibility Act. Specifically, he commented that our Initial Regulatory Flexibility Analysis did not find that the proposed rule would have a significant economic impact on small entities. Our initial analysis did conclude that cranberry growers and handlers (both large and small) would benefit from the establishment of volume regulation during the upcoming season. The Final Regulatory Flexibility

Analysis contained in this document provides further analysis to support this conclusion. Also, this document analyzes the impact of the various alternative levels of regulation offered in the proposed rule.

Congressman Talent also stated that AMS eliminated opportunity for public comment on the Committee's revised recommendation for volume regulation (CMC2) that it made on June 6, 2000. Subsequent to the publication of the proposed rule on May 30, AMS mailed a copy of that rule to every cranberry grower and handler of record. That mailing also invited interested parties to attend the June 6 meeting and express their views. Additionally, AMS posted a summary of what transpired at that meeting (as well as a full transcript of the meeting) on its website and included it in the rulemaking record. Many of those who filed comments in response to the proposed rule specifically addressed the second Committee recommendation. More importantly, CMC2 falls within the scope of options contained in the proposed rule. The marketable quantity is slightly higher than in two of those options, and lower than in a third. The 85 percent allotment percentage established by this rule is the same as that contained in two of the three published options. The change in the way sales histories are computed is also within the scope of options proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The crop year begins on September 1, 2000. This rule should be effective prior to the beginning of the crop year so that the Committee can initiate its appeals procedures well in advance of the start of the volume regulation. Also, growers need time to adjust their cultural practices in preparation for the volume regulation. Further, handlers and growers are aware of this rule, which was recommended and modified based on public meetings. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In paragraph (d) of § 929.49, the phrase ''On or before June 1'' is suspended.

3. In paragraph (e) of § 929.49, the phrase ''On or before June 1 of any year in which an allotment percentage is established by the Secretary'' is suspended.

4. Section 929.104 is revised to read as follows:

§ 929.104 Outlets for excess cranberries.

(a) In accordance with § 929.61, excess cranberries may be disposed of only in the following noncommercial or noncompetitive outlets, but only if the requirements in paragraph (b) of this section are complied with:

(1) Foreign countries, except Canada.

(2) Charitable institutions.

(3) Any nonhuman food use.

(4) Research and development projects dealing with dehydration, radiation, freeze drying, or freezing of cranberries, for the development of foreign markets.

(b) Excess cranberries may not be converted into canned, frozen, or dehydrated cranberries or other cranberry products by any commercial process. Handlers may divert excess cranberries in the outlets listed in paragraph (a) of this section only if they meet the diversion requirements specified in § 929.61(c).

5. In § 929.107, paragraphs (a) and (c) are amended by replacing the number ''15'' with the number ''50''.

§ 929.109 [Removed]

6. Section 929.109 is removed.

7. Section 929.125 is revised to read as follows:

§ 929.125 Committee review procedures.

Growers may request, and the Committee may grant, a review of determinations made by the Committee pursuant to §§ 929.48 and 929.149, in accordance with the following procedures:

(a) If a grower is dissatisfied with a determination made by the Committee which affects such grower, the grower may submit to the Committee within 30 days after receipt of the Committee's determination of sales history, a request for a review by an appeals subcommittee composed of two independent and two cooperative representatives, as well as a public member. Such appeals subcommittee shall be appointed by the Chairman of the Committee. Such grower may forward with the request any pertinent material for consideration of such grower's appeal.

(b) The subcommittee shall review the information submitted by the grower and render a decision within 30 days of receipt of such appeal. The subcommittee shall notify the grower of its decision, accompanied by the reasons for its conclusions and findings.

(c) If the grower is not satisfied with the subcommittee's decision, the grower may further appeal to the full Committee. The grower must submit its written argument to the Committee along with any pertinent information for the Committee's review within 15 days after notification of the subcommittee's decision. The Committee shall respond within 15 days of the receipt of the grower's appeal. The Committee shall inform the grower of its decision, accompanied by the reasons for its decision.

(d) The grower may further appeal to the Secretary, within 15 days after notification of the Committee's findings, if such grower is not satisfied with the Committee's decision. The Committee shall forward a file with all pertinent information related to the grower's appeal. The Secretary shall inform the grower and all interested parties of the Secretary's decision. All decisions by the Secretary are final.

8. A new § 929.148 is added to read as follows:

§ 929.148 State average yield.

The State average yield pursuant to section 929.48(a)(5)(ii) is defined as the yield per State for the year 1997 or the best four years out of the last six years whichever is greater. However, if the estimated commercial sales are greater than the volume computed by this method, the Committee will use the grower's estimated commercial sales.

9. A new § 929.149 is added to read as follows:

§ 929.149 Determination of sales history

A sales history for each grower shall be computed by the Committee. For growers with five years of sales history, a sales history shall be computed using an average of the highest 4 years of sales. For growers with six or more years of sales history, a sales history shall be computed using an average of the highest four of the most recent six years of sales. If these growers also have newer acreage with four years of sales history or less, and such growers can provide the Committee with credible information which would allow the Committee to segregate the sales history of the newer acreage, then that acreage shall be treated in the same manner as acreage of a grower with four years or less of sales history. For a grower with four years or less of sales history, the sales history shall be computed using the highest sales season. Sales history for new acreage with no history of sales (for both new and existing growers) shall be computed according to § 929.48 of the order.

§ 929.151 [Removed]

10. Section 929.151 is removed.

11. A new § 929.158 is added to read as follows:

§ 929.158 Exemptions.

Sales of organic and fresh cranberries shall be exempt from volume regulation provisions. Handlers shall qualify for such exemption by filing the amount of fresh or organic cranberry sales on the grower acquisition listing form. In order to receive an exemption for organic cranberry sales, such cranberries must be certified as such by a third party organic certifying organization acceptable to the Committee.

12. A new § 929.250 is added to read as follows:

§ 929.250 Marketable quantity and allotment percentage for the 2000–2001 crop year.

The marketable quantity for the 2000–2001 crop year is set at 5.468 million barrels and the allotment percentage is designated at 85 percent. The marketable quantity may be adjusted to retain the 85 percent allotment percentage if the total industry sales history increases due to established growers receiving additional sales history on acreage with four years sales or less.

Dated: July 3, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17289 Filed 7–5–00; 4:00 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB53

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to provide that applicants may seek financial assistance to provide mobile telecommunications service without regard to whether the applicant is providing basic local exchange service in the territory to be served. RUS is also clarifying its regulations with regard to the application of nonduplication provisions and state telecommunications modernization plans to mobile telecommunications services. In addition, RUS has included criteria for determining ''reasonably adequate service'' levels for mobile telecommunications service. This final rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: This rule is effective July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and

Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related Notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034).

Unfunded Mandates

This rule contains no Federal Mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Pub. L. 104–104) and regulatory actions by the Federal Communications Commission are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently.

RUS regulations currently stipulate that an entity must provide or propose to provide the basic local exchange telephone service needs of rural areas to be eligible for RUS financing (7 CFR 1735.14, Borrower Eligibility) and that loans cannot be made for facilities to serve subscribers outside the borrower's local exchange service area (7 CFR 1735.17, Facilities Financed). The Telecommunications Act of 1996, however, made the term ''basic local exchange service'' obsolete. The law mandates that universally available and affordable telecommunications services, including access to advanced services, be made available to all US citizens—whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telecommunications services to rural areas is to make certain providers of services, in addition to providers of local exchange services, eligible for RUS financing. Mobile telecommunications services are included among the telecommunications services financeable under the Rural Electrification Act (RE Act) and among those contemplated in the Telecommunication Act of 1996. Therefore, RUS believes that, in addition to wireline service, mobile telecommunications services should be made available in all rural areas. As such, RUS is deleting its requirement that all borrowers provide local exchange service. Mobile telecommunications service, which allows the user to move within the service area while making and receiving telephone calls and other services, is fundamentally different from wireline service and is not, therefore, duplicative under the RE Act. Since mobile telecommunications services do not and cannot serve the same function as contemplated in state telecommunications modernization plans (TMPs) for wireline services (see 7 CFR 1751.106), RUS policy is to consider a borrower receiving a loan to finance such services to be participating in the state's plan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals contained in the plan. RUS will continue to follow this policy regardless of whether the borrower provides any local exchange services. In addition, RUS has included criteria for determining ''reasonably adequate service'' levels for mobile telecommunications service.

RUS regulations are also utilized by the Governor of the Rural Telephone Bank in carrying out the loan program of the Rural Telephone Bank (the Bank); therefore, these policy revisions would apply to loans made by the Bank, as well.

Comments

RUS received eight comments regarding the proposed rule, published at 65 FR 6922 on February 11, 2000, which were taken into consideration in preparing the final rule. A list of the commenters and comment summaries and responses follows:

1. Cellular Telecommunications Industry Association (CTIA).
2. Farmers Telephone Cooperative, Inc. (FTC).
3. Joint comments submitted from the National Rural Telecom Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, United States Telecom Association and the Western Rural Telephone Association, (the Associations).
4. National Rural Telecommunications Cooperative (NRTC).
5. National Telephone Cooperative Association (NTCA).
6. Noverr Publishing, Inc. (NPI).
7. Rural Telephone Finance Cooperative (RTFC).
8. Western Wireless Corporation (WWC).

Comment: NPI, a mobile wireless telephone service, supports the proposed amendments to the existing regulations, stating that they will increase rural access to advanced telecommunications technology. CTIA and WWC also support the expansion of the RUS loan program to facilitate the provision of wireless telecommunications services to rural areas. They believe that the proposed rule correctly recognizes that wireless services fall within the definition of ''telephone service'' as defined by Congress for RUS. CTIA and WWC support RUS' conclusion that prudent public policy ensures that consumers in rural areas have access to wireless and advanced telecommunications services comparable to that of their urban counterparts. However, CTIA, WWC, and FTC recommended that RUS go further to encourage the development of competitive telecommunications services in rural areas between wireless and wireline service providers. They stated that RUS policies should facilitate wireline-wireless competition. They further stated that the proposed rule should be amended by removing the word ''incidentally'' to allow rural consumers to receive the benefits of genuine facilities-based competition. RUS' new rules should encourage multiple competing carriers to provide service to presently unserved and underserved rural markets.

Reply: RUS appreciates the support for its efforts to expand modern telecommunications in rural areas. However, unless authorized by the provisions of the RE Act, RUS is prohibited from making a loan that results in ''duplication of lines, facilities, or systems providing reasonably adequate services * * *.'' (7 U.S.C. 922) (hereinafter referred to as ''duplication''). Replies to other comments explain that RUS believes that wireline and mobile service do not duplicate each other. RUS' mission is to ensure that rural consumers have access to modern telecommunications service including wireless and advanced telecommunications services comparable to urban and suburban subscribers. The rule, therefore,

promotes the financing of mobile service where such service is non-existent or is determined to be inadequate.

Comment: CTIA and WWC stated that RUS should modify its rules to specify that, because states are federally preempted from requiring certificates of convenience (CCN) and necessity for wireless providers, § 1735.12(a) of the rule does not apply to wireless carriers, and mobile wireless carriers should be subject to § 1735.12(b) instead.

Reply: The RE Act dictates what action RUS will take when borrowers have a CCN or do not have a CCN. RUS will make a nonduplication finding in those cases where one is required.

Comment: CTIA and WWC further recommended that § 1735.12(d) of the proposed rule be revised to insure that it does not impose greater requirements on commercial mobile radio service (CMRS) carriers than those imposed by the FCC. Thus, RUS should hold that the clarity, reliability and signal strength requirements contained in proposed § 1735.12(d)(2) and (3) are met so long as a wireless provider is operating within the parameters of its FCC license, and that the mobile 911 requirements of proposed § 1735.12(d)(5) are consistent with those established by the FCC. NRTC recommended that the proposed requirements for mobile telecommunications service be interconnected with the public switched telephone network (PSTN) and that mobile 911 service be available to all subscribers, should not be determinative of eligibility for RUS loans. NRTC stated that the safety advantages of wireless technology do not depend on access to the PSTN or 911. Businesses and individuals using mobile wireless services not connected to the PSTN may still report emergency situations at the scene, rather than going to the nearest telephone. NRTC recommended that RUS eliminate the requirements of interconnection (§ 1735.12(d)(4)) and 911 availability (§ 1735.12(d)(5)) in its proposed rule changes.

Reply: The criteria used in determining if service is reasonably adequate are designed to ensure that no rural area is trapped with inferior, substandard service. RUS has, therefore, established criteria to ensure that service being provided is adequate. RUS will consider *all* criteria in § 1735.12(d) before making a determination as to whether a loan can be made based on a finding of inadequate service. RUS and the FCC have different roles. RUS' function is to promote and finance telecommunications service in rural areas. RUS is prohibited from financing duplication. The service features described in determining adequate service are a minimum standard of service RUS believes present-day subscribers should receive.

Comment: CTIA and WWC recommended that RUS should also implement proposed § 1735.12(d)(8), which allows the Administrator to impose ''any other criteria * * * determine[d] to be applicable,'' in a manner that ensures that wireless carriers applying for RUS loans are not subjected to unreasonable requirements or provisions that conflict with FCC rules and policies. In addition, RUS should likewise implement proposed § 1735.12(d)(7), which precludes RUS loans from being used to provide service ''at rates which render [it] unaffordable to a majority of rural persons,'' in a manner that takes into account competition in the wireless marketplace.

Reply: RUS appreciates the comment and will consider all relevant circumstances in applying § 1735.12(d) in a manner designed to promote modern mobile service in rural areas. Allowing the RUS Administrator the discretion to establish or evaluate ''other criteria'' is necessary and prudent in the rapidly evolving technological environment of the telecommunications industry. In addition, since the Administrator is responsible to the taxpayers for the security of the government's loans, he or she must be afforded the ability to adequately assess unique or rare situations to determine what is in the best interest of the rural residents measured against a provider's ability to repay its debt. With regard to rates, the word ''majority'' in the proposed rule has been changed to ''significant number.'' RUS believes that the mobile service offered at unaffordable rates is not ''available'' if it is offered at rates that are unaffordable to a significant number of persons, and cannot, therefore, be adequate. Financing for mobile wireless service will only be provided where such facilities and the resulting service do not currently exist or is found to be inadequate.

Comment: The Associations stated that RUS should not distinguish between mobile telecommunications service and wireline telecommunications service. The Rural Electrification Act defines ''telephone service'' so as to include both. The two kinds of service duplicate each other if both are offered in the same area.

Reply: RUS believes that mobile and wireline telecommunications services are easily distinguishable from each other. The most obvious difference is that wireline service reaches only a fixed location while a receiver for mobile service allows the subscriber to send and receive communications while moving within a wide area. There is also a significant difference in capacity, with the wireline facilities being able to handle a significantly larger volume of information. Wireline's greater capacity is reflected in the difference in the pricing of the two services with subscribers being predominantly charged a fixed monthly rate while mobile service subscribers are charged rates that are more sensitive to usage levels. The RE Act definition of ''telephone service'' is sufficiently broad to allow RUS to finance wireline services and mobile services. Neither the definition nor any other provision of the RE Act prevents the RUS from financing more than a single provider of non-duplicating services in a specific area.

Comment: The Associations stated that Congress never envisioned RUS financing telecommunications competition. Neither the RE Act nor the Telecommunications Act of 1996 gives RUS the authority to finance competition.

Reply: As noted in the reply to the previous comment, the mobile and wireline services are distinct and, therefore, do not duplicate or compete with each other when offered in the same area. Moreover, the RE Act prohibits RUS financing of duplication, not competition, so that RUS may provide financing in some situations, even though another provider purports to serve the same area. The RE Act makes another distinction, between (1) cases where there is ''a state regulatory body having authority to regulate telephone service and to require certificates of convenience and necessity,'' 7 U.S.C. 922, and (2) cases where there is not such a body. Non-duplication findings are required only in the second.

Comment: RTFC stated that RUS should concentrate on financing telecommunications services in rural areas, instead of promoting competition and also asserted that there are other sources of funds for mobile telecommunications services.

Reply: RUS' mission is to promote and finance the widest range of telecommunications services defined in the RE Act throughout rural America. RUS is not simply a lender of last resort as the comment implies. Just as RUS in the last 50 years led extension of telephone service in rural areas, it looks forward to leading in the deployment of mobile wireless and advanced

telecommunications services currently underway.

Comment: The Associations stated that RUS, by financing wireless and wireline services in the same area, increases the risk of default on its loans and jeopardizes provision of services in the area.

Reply: RUS is alert to the possibility of the risks mentioned in the comment. The agency believes that mobile wireless and wireline are distinct and do not, therefore, duplicate each other to any significant degree. Therefore, entry of a mobile telecommunications provider into an area poses little financial risk to an existing wireline provider. The language in the regulation states that generally, RUS will not make a loan to another entity to provide the same service (*i.e.,* mobile where mobile already exists) already being provided by a RUS borrower unless the borrower is unable to meet its obligations to RUS (this section, in proposed rule as an amendment to § 1735.14, will instead be added to § 1735.17). As a Federal lender, it is RUS' responsibilities to ensure, to the best of its ability, security for all outstanding and future loans, and to encourage telecommunications services in rural areas.

Comment: In the proposed regulations, the Associations assert that RUS fundamentally changed its definition of adequate telephone service by making the existing definition of adequate service apply only to wireline service and by adopting a new definition of mobile telecommunications services.

Reply: The RE Act requires the Administrator of RUS to determine that a loan will not result in the ''duplication of lines, facilities, or systems, providing reasonably adequate services''. If the existing service is not reasonably adequate, an RUS loan to improve service does not result in duplication. Mobile service is distinct from wireline service thereby requiring a definition of adequacy that properly reflects its uniqueness. With rapidly advancing technologies, the quality of telecommunication service expected by all persons has risen dramatically in recent years. Therefore, the new definition of adequate mobile telecommunications service reflects these developments.

Comment: The Associations assert that RUS does not have authority to determine the affordability of wireline or wireless service.

Reply: The new regulations state that ''mobile telecommunications service is not provided at rates which render the service unaffordable to a majority of the rural persons'' is one of the criteria RUS will use in determining whether existing mobile telecommunications service is adequate (7 CFR 1735.12(d)(7)). RUS believes that service available only at extremely high rates that render it inaccessible to a significant number of rural subscribers is not adequate service. The evaluation of whether rates are affordable to rural subscribers is made only to determine whether RUS will make a loan in the particular situation and is clearly different from the regulatory judgement of whether rates are reasonable. Therefore, RE Act purposes would be furthered by a loan to finance mobile telecommunications services at reasonable rates that are affordable to rural persons who would not otherwise have access to such services.

Comment: The Associations believe that RUS should not eliminate the requirement in its existing regulations that borrowers must provide basic exchange service. Instead, RUS should amend its regulations to authorize the financing of mobile and other advanced telecommunications services for providers that are also providing basic exchange service.

Reply: Telecommunications providers offering basic local exchange telephone service are eligible for RUS loans currently and will continue to be eligible under the new regulations. The facilities used to deliver mobile services are distinct from wireline facilities, including those facilities that provide basic exchange service, and RUS believes that treating mobile services separately will expedite their expansion in rural areas. Limiting RUS funding of mobile services to those companies providing basic exchange services would in most instances mean that the existing telephone company could decide not to provide mobile services and then prevent persons and businesses in its service area from receiving the service from any other company as well.

Comment: The Associations stated that RUS cannot exempt carriers from the statutory State telecommunications plan (TMP) requirements.

Reply: The RE Act requires, as a condition of receiving a loan, that ''the applicant is a participant in the [TMP]'' for the state in which the proposed service is located, ''if the plan was developed by telephone borrowers under [the RE Act]'' (7 U.S.C. 935(d); 7 U.S.C. 948(b)(4)(B)). The statute sets forth requirements for a TMP that contemplate only wireline carriers (see 7 U.S.C. 935(d)(3)) and existing regulations have been developed utilizing that interpretation (7 CFR 1751.101(d)). RUS believes that technologies that allow mobile service to meet TMP standards will not be practical for a considerable time, if ever, and that it was not Congress' intention to delay expansion of mobile services in rural areas. Under the existing interpretation of the TMP standards, RUS does not require that all of the wireline services provided by a borrower be upgraded to comply with the TMP, including services not covered by the loan. Instead, RUS requires that loan funds be spent in a manner consistent with the borrower achieving TMP standards (7 CFR 1751.103). RUS interprets the provision in the same way for mobile loans—the borrower must not use the funds in a manner inconsistent with achieving TMP standards. This interpretation will facilitate both accomplishing TMP standards at the earliest possible date and the expansion of mobile service in rural areas.

This rule becomes effective on the date of publication in the **Federal Register** because any further delay would contribute to denying benefits to residents in rural areas. This rule is part of an Administration initiative to ensure that rural areas receive access to all types of telecommunications services—services already available to urban residents. Part of the intent of that initiative is to provide funding, this fiscal year (fiscal year 2000), to entities to provide mobile telecommunications service where that service does not exist or is inadequate. In order to do that, applicants must have time to prepare and submit applications in accordance with this and other applicable RUS regulations; RUS must also have adequate time to process and approve eligible applications. A delay in the effective date of this rule of 30 days, coupled with application preparation, review and processing times, would undermine the ability to provide funding this fiscal year, thereby denying benefit to rural residents.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

The authority citation for part 1735 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.2, the following definitions are added in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Mobile telecommunications service means the transmission of a radio communication voice service between mobile and land or fixed stations, or between mobile stations.

* * * * *

Public switched network means any common carrier switched network, whether by wire or radio, including local exchange carriers, interexchange carriers, and mobile telecommunications service providers, that use the North American Numbering Plan in connection with the provision of switched services.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

* * * * *

3. Amend § 1735.10 by:

A. Revising paragraph (b);

B. Redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively; and

C. Adding a new paragraph (c).

This revision and addition read as follows:

§ 1735.10 General.

* * * * *

(b) RUS will not make hardship loans, RUS cost-of-money loans, or RTB loans for any wireline local exchange service or similar fixed-station voice service that, in RUS' opinion, is inconsistent with the borrower achieving the requirements stated in the State's telecommunication modernization plan within the time frame stated in the plan (see 7 CFR part 1751, subpart B), unless RUS has determined that achieving the requirements as stated in such plan is not technically or economically feasible.

(c) A borrower applying for a loan to finance mobile telecommunication services shall be considered to be a participant in the State's telecommunication modernization plan so long as the loan funds are not used in a manner that, in the opinion of the Administrator, is inconsistent with the borrower achieving the goals set forth in the plan.

* * * * *

4. Amend § 1735.12 by:

A. Revising paragraph (c) introductory text; and

B. Adding new paragraphs (d) and (e).

The revision reads as follows:

§ 1735.12 Nonduplication.

* * * * *

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service in determining whether such service is reasonably adequate:

* * * * *

(d) RUS shall consider the following criteria for any of mobile telecommunications service in determining whether such service is reasonably adequate:

(1) The extent to which area coverage is being provided as described in 7 CFR 1735.11.

(2) Clear and reliable call transmission is provided with sufficient channel availability.

(3) The mobile telecommunications service signal strength is at least −85dBm (decibels expressed in miliwatts).

(4) The mobile telecommunications service is interconnected with the public switched network.

(5) Mobile 911 service is available to all subscribers, when requested by the local government entity responsible for this service.

(6) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Mobile telecommunications service is not provided at rates which render the service unaffordable to a significant number of rural persons.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

(e) RUS does not consider mobile telecommunications service a duplication of existing wireline local exchange service or similar fixed-station voice service. RUS may finance mobile telecommunications systems designed to provide eligible services in rural areas under the Rural Electrification Act even though the services provided by the system may incidentally overlap services of existing mobile telecommunications providers.

§ 1735.14 [Amended]

5. Amend § 1735.14 by:

A. Removing paragraph (c)(1); and

B. Redesignating paragraphs (c)(2) and (c)(3) as (c)(1) and (c)(2) respectively.

6. Amend § 1735.17 by:

A. Removing paragraph (c)(3);

B. Redesignating paragraphs (c)(4) and (c)(5) as (c)(3) and (c)(4), respectively, redesignating paragraph (d) as paragraph (e); and

C. Adding new paragraph (d):

The addition reads as follows:

§ 1735.17 Facilities Financed.

* * * * *

(d) Generally, RUS will not make a loan to another entity to provide the same telecommunications service in an area served by an incumbent RUS telecommunications borrower providing such service. RUS may, however, consider an application for a loan to provide the same type of service being provided by an incumbent RUS borrower if the Administrator determines that the incumbent borrower is unable to meet its obligations to the government, including the obligation to provide service set forth in its loan documents and to repay its loans.

Dated: July 5, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–17474 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2000–15]

Election Cycle Reporting by Authorized Committees

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations to require authorized committees of Federal candidates to aggregate, itemize and report all receipts and disbursements on an election-cycle basis rather than on a calendar-year-to-date basis. Beginning with reporting periods that start on or after January 1, 2001, authorized committees must report their receipts and disbursements on an election-cycle basis. Please note that this change affects only authorized committees of Federal candidates and does not affect unauthorized committees or other persons. This requirement reflects recent changes in the Federal Election Campaign Act of 1971. The intent of these rules is to simplify recordkeeping and reporting requirements for authorized committees of Federal candidates and to better disclose receipts and disbursements that occur during an election cycle. Further information is provided in the supplementary information that follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Smith, Assistant General Counsel, or Cheryl Fowle, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to the regulations at 11 CFR 104.3, 104.7, 104.8 and 104.9. These rules implement section 641 of Public Law 106–58 (Pub. L. No. 106–58, 106th Cong. 1st Sess., § 641, 113 Stat. 430, 477 (1999)), which amended section 434(b) of the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.* (''FECA'' or ''the Act''), to require, *inter alia,* that the Commission require the authorized committees of Federal candidates to aggregate and report their receipts and disbursements on an election-cycle-to-date basis, rather than a calendar-year-to-date basis, as was previously required. The goals of the 1999 amendment to the FECA and the new rules are to simplify recordkeeping and reporting for authorized committees by itemizing contributions, other receipts, and disbursements on the same election-cycle-to-date basis, and to provide the public with more relevant information for the current election cycle. 145 Cong. Rec. E1896–02, September 17, 1999 (statement of Hon. William M. Thomas). The 1999 amendment to the FECA requires these rules to be effective for reports covering periods after December 31, 2000.

Section 438(d) of Title 2, United States Code requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on July 6, 2000.

Explanation and Justification

The Commission initiated this rulemaking by publishing a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** on May 3, 2000, 65 FR 25672 (May 3, 2000). The NPRM contained proposed rules at 11 CFR 104.3, 104.8 and 104.9 requiring authorized committees of Federal candidates to itemize and report their receipts and disbursements on an election cycle basis. The proposed rules used the definition of election cycle at 11 CFR 100.3(b), under which the election cycle begins the day after the general election for a seat or office and ends on the day of the next general election for that seat or office. The NPRM also contained two alternative approaches to the definition of election cycle. Under alternative one, the election cycle, for reporting purposes, would begin on January 1 of the year following the general election and end on December 31 of the year of the next general election. Under alternative two, the election cycle would begin twenty-one days after the general election for a seat or office and would end twenty days after the next general election for that seat or office. Additionally, under the second alternative, the contribution limit regulations at 11 CFR 110.1 and 110.2 would have been revised to require that undesignated contributions made up until the twentieth day after the election would aggregate to the contributor's contribution limit for the election that was just held.[1]

The comment period ended on June 2, 2000. The Commission received two comments from the Project On Government Oversight and Eliza Newlin Carney, a staff correspondent for the National Journal. One commenter stated that it has studied the problems with reviewing and searching FEC records and has found it very difficult to determine the amounts of individual contributions reported for a specific election. The commenter stated that the proposed rules directly correct the problem and that it fully supports their implementation. The second commenter was concerned that the rulemaking would eliminate year-end reports. The revised rules do not change the filing of year-end reports, or the filing frequency of any other reports, which are mandated by § 434 of the FECA. The rules simply alter the manner in which authorized committees aggregate and disclose their receipts and disbursements within the required reports. In addition, a comment from the Internal Revenue Service (''IRS'') stated that the proposed rules are not inconsistent with IRS regulations or the Internal Revenue Code.

The final rules are identical to the rules proposed in the NPRM. Revisions to 11 CFR 104.3 state that the specified contents of authorized committee's reports must be disclosed for the reporting period and the election-cycle-to-date. Section 104.7 is being amended to change references to authorized committee's itemizations of contributions aggregating in excess of $200 per calendar year to $200 per election cycle and to provide authorized committees with examples of clear statements requesting contributor information, which are required on written solicitations. Sections 104.8 and 104.9 are being revised to require authorized committees to provide identifying information for contributors whose contributions total over $200 within the election cycle and for persons to whom expenditures and other disbursements exceed $200 within the election cycle.

Section 104.3 Contents of Reports (2 U.S.C. 434(b), 439a)

The Commission's regulations at 11 CFR 104.3 set forth the required contents of reports of receipts and disbursements. Section 104.3 is being revised to state that the specified contents of authorized committee's reports must be disclosed for the reporting period and for the election cycle-to-date rather than for the reporting period and calendar year-to-date. Please note that this amendment to the FECA does not affect unauthorized committees and the Commission is not issuing new rules modifying the calendar year reporting system they currently use, or changing the forms they file at this time.[2]

The introductory language of paragraph (a) is being revised to state that authorized committees must disclose their receipts for the reporting period and for the election cycle.

Paragraph (a)(3) is being revised to state that authorized committees must report the amount of each category of receipt listed in that paragraph for the reporting period and the election cycle.

A parenthetical statement is being added to paragraphs (a)(4)(i) to require authorized committees to identify each contributor whose election cycle-to-date total contributions exceeds $200.[3] Parenthetical statements are also being added to paragraphs (a)(4)(v) and (vi) to require authorized committees to identify each person whose election-cycle-to-date total rebates, refunds or other offsets to operating expenditures, or total dividends, interest or other

[1] Issues concerning election cycle are discussed below.

[2] On March 10, 2000, the Commission sent a legislative recommendation to Congress recommending a clarifying amendment that would remove the election cycle language from 2 U.S.C. 434(b)(6)(B)(iii) and (v) because 2 U.S.C. 434(b)(6)(B) applies solely to unauthorized committees.

[3] The Commission notes that publicly funded Presidential candidates are required to provide in their matching fund submissions, contributor information for contributors whose aggregate contributions exceed $200 per calendar year. 11 CFR 9036.1(b)(1)(ii). Since the statutory amendments did not alter the matching fund submission process, no changes are being made to the Commission's matching fund regulations applicable to the 2000 election or future elections.

receipts provided to the authorized committee exceeds $200.

Similarly, paragraph (b) is being revised to state that authorized committees must disclose their disbursements for the reporting period and for the election cycle.

Paragraph (b)(2) is being amended to state that authorized committees must report the amount of each category of disbursement listed in this paragraph for the reporting period and the election cycle.

Paragraph (b)(4)(i) is being revised to require authorized committees to identify each person to whom expenditures in an aggregate amount exceeding $200 within the election cycle are made to meet the authorized committee's operating expenditures.[4]

Paragraph (b)(4)(vi) is being reworded to require authorized committees to identify each person who has received any disbursements not otherwise itemized under paragraph (b)(4)(i), (ii), (iii), (iv) or (v) aggregating in excess of $200 within the election cycle.

Paragraph (i) is being revised to require that all reports filed by authorized committees under section 104.5 be cumulative for the election cycle rather than for the calendar year.

New paragraph (k) is being added to ensure the accurate reporting of election cycle-to-date activity for those candidates who are in mid-election cycle on January 1, 2001, when these regulations take effect. While receipts and disbursements made between November 8, 2000 (the day after the general election) and December 31, 2000, will be reported in the year-to-date totals for 2000 in the post-general election report and the year-end report, under new paragraph (k) of 11 CFR 104.3, these amounts must also be included in the election cycle-to-date aggregation totals that are reported beginning in 2001. Similarly, some candidates for the U. S. Senate in 2002 and 2004 and possibly some Presidential candidates for the 2004 election may have two, three, four or more years of previously reported receipts and disbursements. These amounts must also be included in the election-cycle-to-date figures reported on the first report covering financial activity occurring in 2001.

On the Detailed Summary Page of each report filed for the first election cycle in which these rules are in effect, election-cycle-to-date totals should be reported for each category of receipts (except itemized and unitemized contributions from individuals) and each category of disbursements. Please note that the Commission is creating a one-time worksheet to assist authorized committees in aggregating election-cycle-to-date data because this might require some authorized committees to aggregate several years of previously reported receipts and disbursements. However, the Commission is not making any changes to either the Detailed Summary Page, or the schedules of contributions or expenditures, that would necessitate the filing of amendments to reports covering pre-2001 financial activity.

The Commission received no comments on the proposed amendments to 11 CFR 104.3.

Section 104.7 Best Efforts (2 U.S.C. 432(i))

Under 11 CFR 104.7, treasurers are required to exercise best efforts to obtain, maintain and report certain identifying information for contributors whose total contributions exceed $200 in a calendar year. An amendment to paragraph (b) of 11 CFR 104.7 revises the references to $200 in a calendar year to $200 in an election cycle with regard to contributions itemized by authorized committees. This revision is consistent with the changes to the regulations at 11 CFR 104.3 requiring authorized committees to itemize contributions from any contributor aggregating in excess of $200 per election cycle. Paragraph (b) of 11 CFR 104.7 requires written solicitations to contain a clear statement requesting contributor information. The previous regulations gave two examples of clear statements. The Commission is adding two new examples at 11 CFR 104.7(b)(1)(i)(B) for authorized committees.

Paragraph (b)(3) of 11 CFR 104.7 requires political committees to disclose contributor information not supplied by the contributor if the political committees have the information in their records or reports filed within the same ''two-year election cycle.'' Paragraph (b)(4)(ii) of 11 CFR 104.7 requires that if political committees file an amendment containing contributor information received after contributions are disclosed, they must amend every report containing itemized contributions from those contributors for the ''two-year election cycle.'' The Commission sought comments on possibly revising paragraphs (b)(3) and (b)(4)(ii) to require authorized committees to supply information found in reports filed within the entire election cycle and to amend all reports disclosing itemized contributions from the contributor during the election cycle. Such a revision would require authorized committees to maintain copies of records and reports for the entire cycle (two, four or six years for House, Presidential and Senate candidates, respectively). Since the FECA requires political committees to maintain records and reports for a period of three years (2 U.S.C. 432(d)), the Commission has decided not to revise paragraph (b)(3) and (b)(4)(ii). For purposes of further clarification, ''two-year election cycle'' means the most recent two years in the current election cycle.

The Commission received no comments on this section.

Section 104.8 Uniform Reporting of Receipts

Section 104.8(a) requires a political committee, if it knows an individual contributor's name has changed since an earlier contribution reported during the calendar year, to note the exact name or address previously used with the first reported contribution from that contributor subsequent to the name changes. A parenthetical is being added to note that an authorized committee is required to provide such information if it knows a contributor's name has changed within the election cycle.

A new parenthetical is being added to paragraph (b) of 11 CFR 104.8 to require authorized committees to aggregate contributions from an individual on an election cycle basis rather than on the calendar year basis.

The Commission received no comments on this section.

Section 104.9 Uniform Reporting of Disbursements

Paragraph (a) of 11 CFR 104.9 is being revised to require authorized committees to report certain identifying information for each person to whom disbursements totaling over $200 are made within the election cycle, rather than within the calendar year, as previously required.

Revised paragraph (b) of 11 CFR 104.9 requires authorized committees to disclose certain identifying information about any recipient to whom an expenditures totaling over $200 are made within the election cycle, rather

[4] While the amendment requires all disbursements including operating expenditures to be aggregated and reported on an election-cycle basis, it does not require that operating expenditures be itemized on an election-cycle basis. Thus, the effect of the amendment is that operating expenditures would be reported on the summary pages on an election-cycle basis and itemized on Schedule B on a calendar-year basis. On March 10, 2000, the Commission submitted to Congress a legislative recommendation that Congress amend the FECA by requiring operating expenditures to be itemized on an election cycle basis rather than on a per calendar year basis. The final rules proceed on the assumption that Congress will pass an amendment to the Act to correct this inconsistency prior to the January 1, 2001, effective date required by Public Law 106–58.

than for the calendar year, as was previously required.

The Commission received no comments on this section.

Definition of Election Cycle

Under 11 CFR 100.3(b), an election cycle begins on the day after the general election for the office or seat that the candidate seeks and ends on the day of the next general election for that seat or office.[5] For example, for many candidates for the House of Representatives, the 2004 election cycle begins the day after the general election in 2002 and ends on the day of the general election in 2004. Please note that the length of the election cycle varies depending on the office sought. The election cycle is two years for candidates for the House of Representatives, six years for Senate candidates and four years for Presidential candidates.

For purposes of the contribution limits of 2 U.S.C. 441a and 11 CFR 110.1 and 110.2, contributions to candidates and their authorized committees are aggregated on per election basis. Contribution aggregation regulations at 11 CFR 110.1 and 110.2 state that post-election contributions can only be made to the extent the recipient political committee has net debts outstanding, and these contributions must be properly designated for the previous election. 11 CFR 110.1(b)(3)(i) and 110.2(b)(3)(i). Those regulations further require that any undesignated post-election contributions be applied to the donor's contribution limit for the next election in which the recipient will be a candidate. In *FEC* v. *Haley*,[6] the Ninth Circuit Court of Appeals upheld the Commission's aggregation regulations at 11 CFR 110.1, ruling that post-election loan guarantees for a loan used to retire general-election debt were contributions subject to the limits and aggregation rules in Part 110 of 11 CFR.[7]

In addition to the proposed rules, the NPRM also offered two alternatives approaches to defining *election cycle,* neither of which was included in the proposed rules.

Alternative 1. The first alternative was to add a new paragraph (c) to 11 CFR 104.1 stating that for reporting purposes only, authorized committees shall begin the ''election cycle'' on January 1 of the year following the general election for a seat or office and shall end the election cycle on December 31 of the calendar year in which the next general election for that seat or office is held (*e.g.,* January 1, 2003, to December 31, 2004, for House candidates). This approach has the advantage of causing less change to reporting practices and avoiding the need to include election-cycle-to-date figures for two different election cycles in post-general election reports (or year-end reports where no post-general report is filed). While the Commission recognizes that advantage, it is not adopting this alternative because it creates a greater discrepancy in the contribution totals reported for the election cycle and the contribution totals that actually accrue to the election just held. Under this alternative, undesignated contributions received after the general election but before January 1 of the following year are reported in the election cycle to date totals for the general election that was just held, even though these contributions count toward the contribution limits for the next election. Additionally, this approach introduces a definition of election cycle into the regulations that is different than the one in 11 CFR 100.3(b), which relates to determining whether an individual is a candidate. The Commission received no comments on this alternative.

Alternative 2. Under the second alternative approach, for both reporting and contribution limit purposes, authorized committees would begin the election cycle on the twenty-first day after the general election for the seat or office the candidate is seeking (the day after the end of the post-general election reporting period) and end the election cycle on the twentieth day after the next general election for the seat or office the candidate is seeking (the day the post-general reporting period ends for that election). Under this alternative, both 11 CFR 100.3(b) (election cycle definition) and 11 CFR 104.3 (reporting) would need to be amended. In addition, the contribution limit regulations at 11 CFR 110.1 and 110.2 would need to be changed to modify the attribution date of undesignated contributions for a general election from election day to the twentieth day after the election.

Under this approach, the post-general election report covers only one election cycle. Nevertheless, for candidates who do not participate in the general election (and therefore who do not file a post-general election report), the year-end report covers activity occurring both before the twentieth day after the election and after the twentieth day, and thus, spans two election cycles.

The Commission did not adopt Alternative 2 because it believes Congress did not intend to amend the contribution aggregation rules. Section 641 of Public Law 106–58 amended only 2 U.S.C. 434(b), ''Contents or Reports.'' There is no evidence, either on the face of the statute or in its legislative history, indicating Congressional intent to alter the current regulations upheld in *Haley* (see discussion, *supra*) that contributions aggregate as of the date of the election. The Commission has concluded that the legislative intent was simply to change the basis for the contents of reports by authorized committees to provide better disclosure of financial activity from the beginning of the campaign to date. While neither Haley nor the lack of Congressional direction would prohibit the Commission from revising its contribution aggregation rules, the Commission has concluded that it is unnecessary and undesirable to alter those settled rules in this rulemaking. The Commission received no comments on this alternative.

Changes to FEC Forms 3 and 3P

The Commission recognizes that the 1999 amendment to the FECA and the new regulations will necessitate several changes to both the paper and electronic FEC Form 3 (used by House and Senate candidates' authorized committees to report receipts and disbursements) and FEC Form 3P (used by Presidential candidates' authorized committees to report receipts and disbursements). While most of the changes to the forms will consist of renaming headings and redrafting certain instructions, Forms 3 and 3P for the post-general election report (and the year-end report, if no post-general election report was filed) will have to be substantively changed. Section 434(a)(2)(A)(ii) of the FECA and 11 CFR 104.5 require that political committees file post-general election reports covering the period from the 19th day before the general election to the twentieth day after the general election. Thus, the post-general election covers two election cycles. Similarly, two election cycles will be covered in the year-end report for candidates who did not participate in the most recent general election (and therefore did not file a post-general election report). The Commission sought comments as to the simplest and easiest way for political committees to report separately the financial activity for each cycle, given

[5] Please note that in the case of a runoff election after the general election, the election cycle would end on the day of the runoff election. Advisory Opinions 1993–2 and 1983–16.

[6] 852 F.2d 1111 (1988).

[7] At the time of the *Haley* loan guarantees in 1983, 11 CFR 110.1 stated that properly designated post-primary contributions were allowed only to the extent that the recipient committee had net debts outstanding. AO 1977–24 interpreted these rules to apply also to post-general election contributions. The regulations were clarified in a 1987 rulemaking. *See* Explanation and Justification for Rules on Contributions by persons other than multicandidate committees, 52 FR 761 (January 9, 1987).

that the activity occurred within the time period covered by the post-general election report or year-end report. The Commission received no comments on this issue. The Commission expects to transmit revised forms to Congress later this year.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These final rules will not have a significant economic impact on a substantial number of small entities. The only small entities subject to these regulations are candidates for Federal office and their authorized committees. The rules implement statutory reporting requirements that Congress enacted to reduce inadvertent violations of the contribution limits. Therefore, there will be no significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES

1. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

2. Section 104.3 is amended by revising paragraph (a) introductory text, paragraph (a)(3) introductory text, paragraph (a)(4) introductory text, paragraphs (a)(4)(i), (v) and (vi), paragraph (b) introductory text, paragraph (b)(2) introductory text, paragraphs (b)(4)(i) and (vi), paragraph (c) introductory text, and paragraph (i), and by adding paragraph (k) to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

(a) *Reporting of Receipts.* Each report filed under § 104.1 shall disclose the total amount of receipts for the reporting period and for the calendar year (or for the election cycle, in the case of an authorized committee) and shall disclose the information set forth at paragraphs (a)(1) through (a)(4) of this section. The first report filed by a political committee shall also include all amounts received prior to becoming a political committee under § 100.5 of this chapter, even if such amounts were not received during the current reporting period.

* * * * *

(3) *Categories of receipts for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the election cycle in each of the following categories:

* * * * *

(4) *Itemization of receipts for all political committees including authorized and unauthorized committees.* The identification (as defined at § 100.12 of this chapter) of each contributor and the aggregate year-to-date (or aggregate election-cycle-to-date, in the case of an authorized committee) total for such contributor in each of the following categories shall be reported.

(i) Each person, other than any political committee, who makes a contribution to the reporting political committee during the reporting period, whose contribution or contributions aggregate in excess of $200 per calendar year (or per election cycle in the case of an authorized committee), together with the date of receipt and amount of any such contributions, except that the reporting political committee may elect to report such information for contributors of lesser amount(s) on a separate schedule;

* * * * *

(v) Each person who provides a rebate, refund or other offset to operating expenditures to the reporting political committee in an aggregate amount or value in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee), together with the date and amount of any such receipt; and

(vi) Each person who provides any dividend, interest, or other receipt to the reporting political committee in an aggregate value or amount in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee), together with the date and amount of any such receipt.

(b) *Reporting of disbursements.* Each report filed under § 104.1 shall disclose the total amount of all disbursements for the reporting period and for the calendar year (or for the election cycle, in the case of an authorized committees) and shall disclose the information set forth at paragraphs (b)(1) through (b)(4) of this section. The first report filed by a political committee shall also include all amounts disbursed prior to becoming a political committee under § 100.5 of this chapter, even if such amounts were not disbursed during the current reporting period.

* * * * *

(2) *Categories of disbursements for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of disbursements made during the reporting period and, except for itemized and unitemized breakdowns, during the election cycle in each of the following categories:

* * * * *

(4) * * *

(i) Each person to whom an expenditure in an aggregate amount or value in excess of $200 within the election cycle is made by the reporting authorized committee to meet the authorized committee's operating expenses, together with the date, amount and purpose of each expenditure.

* * * * *

(vi) Each person who has received any disbursement(s) not otherwise disclosed under paragraph (b)(4) of this section to whom the aggregate amount or value of such disbursements exceeds $200 within the election cycle, together with the date, amount, and purpose of any such disbursement.

(c) *Summary of contributions and operating expenditures.* Each report filed pursuant to § 104.1 shall disclose for both the reporting period and the calendar year (or the election cycle, in the case of the authorized committee):

* * * * *

(i) *Cumulative reports.* The reports required to be filed under § 104.5 shall be cumulative for the calendar year (or for the election cycle, in the case of an authorized committee) to which they relate, but if there has been no change in a category reported in a previous report during that year (or during that election cycle, in the case of an authorized committee), only the amount thereof need be carried forward.

* * * * *

(k) *Reporting Election Cycle Activity Occurring Prior to January 1, 2001.* The aggregate of each category of receipt listed in paragraph (a)(3) of this section, except those in paragraphs (a)(3)(i)(A) and (B) of this section, and for each category of disbursement listed in paragraph (b)(2) of this section shall include amounts received or disbursed on or after the day after the last general election for the seat or office for which the candidate is running through December 31, 2000.

3. Section 104.7 is amended by revising the introductory text of paragraph (b), paragraph (b)(1) and the first sentence of paragraph (b)(2) to read as follows:

§ 104.7 Best efforts (2 U.S.C. 432(i)).

* * * * *

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the political committee and its affiliated political committees aggregate in excess of $200 in a calendar year (or in an election cycle in the case of an authorized committee) (pursuant to 11 CFR 104.3(a)(4)), the treasurer and the political committee will only be deemed to have exercised best efforts to obtain, maintain and report the required information if:

(1)(i) All written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer, and include an accurate statement of Federal law regarding the collection and reporting of individual contributor identifications.

(A) The following are examples of acceptable statements for unauthorized committees, but are not the only allowable statements: ''Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in a calendar year;'' and ''To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per calendar year.''

(B) The following are examples of acceptable statements for authorized committees, but are not the only allowable statements: ''Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 in an election cycle;'' and ''To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed $200 per election cycle.''

(ii) The request and statement shall appear in a clear and conspicuous manner on any response material included in a solicitation. The request and statement are not clear and conspicuous if they are in small type in comparison to the solicitation and response materials, or if the printing is difficult to read or if the placement is easily overlooked.

(2) For each contribution received aggregating in excess of $200 per calendar year (or per election cycle, in the case of an authorized committee) which lacks required contributor information, such as the contributor's full name, mailing address, occupation or name of employer, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information. * * *

* * * * *

4. Section 104.8 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 104.8 Uniform reporting of receipts.

(a) A reporting political committee shall disclose the identification of each individual who contributes an amount in excess of $200 to the political committee's federal account(s). This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year (or during the election cycle, in the case of an authorized committee), the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

(b) In each case where a contribution received from an individual in a reporting period is added to previously unitemized contributions from the same individual and the aggregate exceeds $200 in a calendar year (or in an election cycle, in the case of an authorized committee) the reporting political committee shall disclose the identification of such individual along with the date of receipt and amount of any such contribution. * * *

* * * * *

5. Section 104.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 104.9 Uniform reporting of disbursements.

(a) Political committees shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year (or within the election cycle, in the case of an authorized committee) is made from the reporting political committee's federal account(s), together with the date, amount and purpose of such expenditure, in accordance with paragraph (b) of this section. As used in this section, *purpose* means a brief statement or description as to the reasons for the expenditure. *See* 11 CFR 104.3(b)(3)(i)(A).

(b) In each case when an expenditure made to a recipient in a reporting period is added to previously unitemized expenditures to the same recipient and the total exceeds $200 for the calendar year (or for the election cycle, in the case of an authorized committee), the reporting political committee shall disclose the recipient's full name and mailing address on the prescribed reporting forms, together with the date, amount and purpose of such expenditure. As used in this section, *purpose* means a brief statement or description as to the reason for the disbursement as defined at 11 CFR 104.3(b)(3)(i)(A).

* * * * *

Dated: July 6, 2000.

Danny L. McDonald,

Vice-Chairman, Federal Election Commission.

[FR Doc. 00–17486 Filed 7–10–00; 8:45 am]

BILLING CODE 6715–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: In this Final Rule a Certified Development Company (CDC) will be permitted to apply to have an area of operations that goes beyond its state of incorporation, and beyond a local economic area in an adjacent state, into a contiguous state to its state of incorporation. This amendment includes specific additional membership, loan committee, and board requirements. Also in the Final Rule, for counties with a population of 100,000 or more that have an existing CDC that is adequately serving the county, an application from a new or expanding CDC will be permitted for that same county if the existing CDC has no objection. In addition, the Final Rule allows a CDC to contract out management and staff under specified circumstances. The changes implemented by this Final Rule seek to enhance competition and improve the effectiveness of the CDC program.

DATES: Effective: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, 202–205–6490.

SUPPLEMENTARY INFORMATION:

1. CDC Area of Operations

The proposed amendments to § 120.802, § 120.810, § 120.822(b), § 120.823(b), § 120.835, and § 120.837 in the Proposed Rule relate to the issue of where a CDC may operate. Public Law 85–699 published August 21, 1958 enacted Title V of the Small Business Investment Act of 1958 (''Act'')—Loans to State and Local Development Companies (''Pub. L. 85–699''). In the Proposed Rule, SBA set forth its understanding that Pub. L. 85–699 authorized SBA to assist development companies that are (1) principally composed of and controlled by persons residing or doing business in that community and (2) formed for the purpose of furthering economic development in the community. The Proposed Rule also noted that when the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations ''formed by local citizens whose primary purpose is to improve *their* community's economy.'' (Emphasis added. Legislative History, Pub. L. 100–590, p. 22.) Aware that this concept of local citizens working to develop and improve their local economy is a fundamental aspect of SBA's Development Company Loan Program (''504 Program''), SBA attempted in the Proposed Rule to balance this fundamental principle of local economic development with SBA's goal of increasing the availability of 504 lending to small businesses across the country. The Small Business Investment Act, section 504, authorized the private sale of CDC debentures to fund CDC loans. The program is now traditionally referred to as the 504 program.

a. Adequately Served Counties

In the Proposed Rule, SBA proposed to allow an applicant CDC (§ 120.810) or existing CDC (§ 120.835) to apply to operate in a county within its State of incorporation even if that county is currently being ''adequately served'' (as defined by SBA) by another CDC, if that county has a population of 100,000 or more and only one CDC incorporated in that State includes that county in its Area of Operations. SBA stated in the Proposed Rule that, ''this will give small businesses more choices.'' In this Final Rule, SBA retains the conditions set forth in the Proposed Rule and, for the reasons set forth below, adds the condition that the CDC that includes the county in its Area of Operations submit a statement of no objection.

Several commentors supported competition among CDCs. A typical supporting comment read: ''Because we are focused on the end customer (*i.e.*, the citizens of our member communities) we believe he will only be aided by a higher level of competition—whether because it makes us sharper and more innovative, or because there is greater exposure for the 504 program, resulting in more loans made to more borrowers.'' A few commentors noted that competition in overlapping Areas of Operations has already been successful in their areas: ''Competition is good for the 504 Loan Program * * * competition stimulated activity, service to the community and enhancement of the 504 Loan Program.''

On the other hand, more than three-quarters of the commentors were opposed to the Proposed Rule for several reasons. Many commentors were concerned that competition in the more densely populated counties of a CDC's Area of Operations would affect the CDC's ability to do projects in more rural counties. One commentor stated: ''I am concerned that this proposed regulation would have the opposite effect of that intended. Allowing CDCs to form in counties that are already being adequately serviced would encourage participation in those areas that offer a high probability of success, while leaving the 'Rural,' 'Less-Growth' areas unattended. In fact, an existing CDC may be potentially forced to reduce its focus from the rural areas of its territory, to those areas attractive to a start-up CDC * * *. The National Association of Development Companies (NADCO), the CDC industry trade association, commented that ''we are deeply concerned that the Proposed Rule will foster a high level of CDC competition in areas of high small business density, to the detriment of rural areas where it might be difficult to make and service 504 loans.''

Another concern expressed by several commentors was that increased competition might burden or reduce a small CDC's cash flow thus hurting its ability to cover its expenses related to 504 loans. One commentor stated: ''It takes a population base of several hundred thousand to produce sufficient revenue for a CDC to be self-sustaining. What is being proposed will ultimately weaken existing CDCs and result in cutting services and assistance to (small businesses) as CDCs try to cut expenses due to less revenue.'' Several commenters stated that many CDCs depend on the cashflow of the 504 loan program to subsidize other local economic activities, such as participation in the microloan program or the provision of a revolving line of credit program. These commentors indicated their beliefs that a CDC approved to expand into an adequately served county would not reinvest in the local community. ''Our concern is that another CDC operating in our community would not be reinvesting in our community, but taking the fee income generated and spending it on marketing and salaries instead of the businesses that are in [the county].''

Many commentors used the term ''cherry-picking'' to describe the effect of allowing other CDCs to compete in the more lucrative markets: ''Market forces will lead the larger, more urban CDCs to 'cherry pick' the more lucrative projects from larger companies who require a lower level of service and assistance. Organizations such as ours use the returns from the occasional large debentures to subsidize the higher costs of providing service to small, needier borrowers * * * It would be extremely damaging to the cause of competition in the 504 loan program if the large CDCs were ever able to invade the territory of performing small CDCs. Many of the small rural performing CDCs just barely bring in enough revenue to support our small staffs, and a 'cherry picking' statewide [CDC] would eventually be able to rob many of us of the ability to operate. The result would be to decrease competition rather than an increase.''

The comments made it clear to SBA that concerns that competition will hurt a CDC's ability to promote economic development in less densely populated counties should be further considered. The comments indicated that many CDCs subsidize their rural economic development efforts with the servicing fees generated by 504 loans made in the more densely populated counties. The comments also indicated that this subsidization would be frustrated by the loss of revenue caused by increased competition in the more densely populated counties. In addition, CDCs would be inspired to ''cherry pick'' or seek counties with high small business density to gain more fee income. The result would likely be a general shift of CDC resources and focus on high-density counties at the expense of more rural counties.

SBA remains committed to the concept of expanding local economic development through increased competition in the 504 program. The commentors raised legitimate concerns but did not provide enough evidence or other support for SBA to totally accept their assessment of the negative impact competition would have on CDC operations. However, the negative predictions by the commentors raised

additional issues that require further consideration as SBA seeks to increase competition in the 504 program. For example, it is a reasonable assertion that the drain in resources and possible loss of loan volume caused by competition in counties with high small business density could hinder a CDC's efforts to serve rural counties. The question is whether, and to what degree, this really will happen. SBA believes the best way to respect the concerns of the commentors while remaining committed to increasing competition is to approach increasing competition in two phases. The first phase will be implemented by this Final Rule. By this Rule, SBA will adopt a policy allowing an applicant or expanding CDC to apply to serve a county with a population of 100,000 or more if:

- The county is part of the Area of Operations of only one CDC;
- The county has not become part of another CDC's Area of Operations within the past 24 months;
- The applicant CDC is incorporated in the State where the county is located; and
- The CDC that includes the county in its Area of Operations submits a statement of no objection.

SBA added in this Final Rule the requirement that the CDC already serving the county submit a statement of no objection so that such CDC could oppose competition in the area if such competition would cause a negative impact on the original CDC's economic development efforts. SBA added this requirement because we believe there is merit to the concerns that competition may, in some circumstances, hinder the original CDC's economic development efforts. So, at this time, SBA will give CDCs the opportunity to draw on their knowledge of their markets and operations to assess whether competition will hurt their economic development efforts. It has been SBA's experience that a CDC will not object to the introduction of competition when it will help serve the local community in ways that the existing CDC is not able to do and will not be counterproductive to the CDC's ability to meet its local economic objectives.

The second step that SBA will take to increase competition in the 504 program will be its publication of an Advanced Notice of Proposed Rulemaking (''ANPR'') specifically soliciting comments on some of the concerns regarding competition raised in response to the Proposed Rule. This ANPR will be published shortly and will give SBA the opportunity to further consider the issue of competition as well as other 504 program issues.

b. Multi-State Expansions

When Title V of the Small Business Investment Act of 1958—Loans to State and Local Development Companies—was enacted by Public Law 85–699 on August 21, 1958, it defined a Development Company as ''an enterprise * * * formed for the purpose of furthering economic development of its community and environs, and with authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations * * * A local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State * * * A local development company shall be principally composed of and controlled by persons residing or doing business in the locality * * *'' (13 CFR part 108, section 2, as of January 1, 1967).

When the § 503 Development Company Loan Program was authorized in 1980, its purpose was to provide financing through corporations ''formed by local citizens whose primary purpose is to improve their community's economy. They assist in the planned economic growth of the community by promoting and assisting the development of small business concerns in their area.'' (Legislative History, Pub. L. 100–590, p. 22) It continues, ''to qualify for this program, a development company must be chartered in the State where it intends to operate * * *'' (*Id.* at 23)).

Since the inception of the 504 Program, no CDC has been certified to operate permanently in more than one State, except for a relatively few circumstances when the CDC's operations crossed state lines, but only to the extent that the area was determined to be a Local Economic Area. Regulations published on August 10, 1982, permitted a CDC to operate within two States if ''(i) a State line bisects a city, in which case the 503 company may operate city-wide or (ii) the 503 company has obtained prior written approval to operate within a contiguous economic area, as determined by SBA, which crosses a State line.'' Since this regulation was published, of the approximately 270 active CDCs, only nine have applied for and been approved by SBA to have their permanent Areas of Operations cross State lines to include a contiguous bi-sected local economic area. Currently, the permanent Area of Operations of all the other CDCs are within their State of incorporation.

There still remain substantial numbers of under-served counties. And, a few CDCs proposed to expand their Areas of Operations beyond their States of incorporation and beyond contiguous bi-sected local economic areas to include some of these under-served counties. To address these issues, and to achieve the goal of stimulating 504 lending activity in underserved areas, SBA proposed to permit out-of-state CDCs (Multi-State CDCs) to apply to cover such underserved areas. At the same time, SBA designed the Proposed Rule to ensure that Multi-State CDCs continue the 504 Program's statutory intent that local citizens responsible for assuring that the program contribute to the local economic development in their communities.

The many comments on this part of the Proposed Rule generally fall into three categories: (1) Those opposed to Multi-State CDCs under any circumstances; (2) those favoring Multi-State CDCs, but critical of the proposed organizational requirements; and (3) those supporting the strict controls SBA proposed on Multi-State CDCs which are designed to continue the emphasis on local involvement and influence in the economic development of each State. Approximately one-quarter of the comments were in the second category with the large majority of the comments closely divided between the first and third categories.

Commentors in the first category did not support the concept of Multi-State CDCs contained in the Proposed Rule. These commentors strongly disagreed with allowing CDCs to cross state lines to serve underserved counties. Representative comments include: ''I cannot see how permanent expansion beyond State borders * * * can conceivably result in increased local involvement * * * It seems contra-intuitive to me * * * '' and ''Creating multi-state CDCs and removing the territorial boundaries may in the short-run bolster the program's production numbers, but ultimately the overall quality and integrity of the program will suffer.'' Many of these commentors believed that the local citizens helping their local economy principle would be violated. One commentor stated, ''* * * the 504 program is grounded in federal legislation which mandates a strong role for local community involvement in the loan making process * * * If non-local and out of state CDCs have the ability to make and process loans, I believe you will lose the closeness and community involvement and you eventually will end up with a production line lending program, which, I believe, is contrary to the program's intent.'' Other commentors believe that large CDCs would develop and drive many small

CDCs out of business: ''* * * the growth of large CDCs will ultimately prove the death knell of smaller CDCs that know their local areas well but do not have skills or capacity to overcome the relationships large CDCs can build with lenders.'' (Emphasis in the original.) SBA understands the concerns but, at this time, believes that the increased program access for small businesses, that would result from allowing out-of-state CDCs justifies allowing such expansions. However, SBA will closely monitor the effect this rule has on smaller CDCs and will propose additional appropriate regulatory changes, if necessary.

The second group of commentors favored allowing CDCs to cover under-served counties outside of their States of incorporation but believed the proposed conditions were too restrictive. One commentor stated: ''Your proposal to restrict the use of funds earned by a CDC to the area in which they were realized is impractical and will only make expansions impossible * * * The funds of a company are budgeted where they are needed to produce the most product and generate income.'' Most of these comments were centered on the proposed membership and Board requirements. A representative comment is the following: ''We suggest * * * the membership requirement be modified to reflect a total membership proportional with the CDC's population served in each of its areas of operations.'' Another commentor stated that it opposed the requirement for a ''CDC to expand its Board of Directors substantially if the CDC is authorized to expand into a limited number of counties in a neighboring state.''

SBA seriously considered requiring proportional representation for both CDC membership and Board membership but ultimately reasoned that a Multi-State CDC should meet the same minimum local presence requirements in each State as any other CDC incorporated in that State. The current Board and membership requirements in each State are *minimum* requirements for all CDCs in the State irrespective of the size of their Area of Operations. Thus, adopting a ''proportional'' standard for Multi-State CDCs would mean that a Multi-State CDC with the minimum number of members would need fewer members in the State to satisfy SBA requirements than a new CDC applying to cover the same area in that same State. To avoid these kinds of outcomes, SBA concluded that a Multi-State CDC should be required to meet the same membership and Board requirements a new CDC would need to meet if it applied to cover the under-served county or counties in the State.

In considering these comments, though, SBA has reconsidered the requirement for equal representation on the Board for each state in which the CDC is approved to operate by SBA. A Multi-State CDC must meet the minimum requirement of having a Board of Directors comprised of at least three of the four membership groups (government organizations responsible for economic development in the Area of Operations and acceptable to SBA; financial institutions that provide commercial long-term fixed asset financing in the Area of Operations; community organizations dedicated to economic development in the Area of Operations; and businesses in the Area of Operations) for each State in which it operates. However, the Final Rule will not require that the Board composition also be equally divided by the number of States in which the Multi-State CDC operates. SBA was persuaded that maintaining equal representation on the Board for each state could be impractical and overly burdensome as Directors' vacancies were created as a result of resignations or other reasons.

Commentors in this group also criticized other restrictions on Multi-State CDCs found in the Proposed Rule. A representative comment was the following: ''(The commentor) disagrees with the proposed regulation of not counting Multi-State CDC loan production when SBA is considering either a new CDC certification or an expansion by an existing CDC [incorporated in the state]. In order to prepare for production in a new market, a Multi-State CDC would be required to make a substantial commitment of personnel and capital. Allowing another CDC to be approved while a Multi-State CDC is developing a new territory would serve as a deterrent for expansion of services in under-served areas across state lines.'' SBA considered these comments and was persuaded that if SBA required the same membership, Board membership, and financial investment that it requires of a CDC incorporated in the state, then the Multi-State CDC should receive the same protection of its area as any CDC incorporated in the State. In the final rule SBA has modified the Proposed Rule to treat Multi-State CDCs the same as other CDCs in regards to counting loans to determine whether an area is adequately served and also to protect the area from expansion by another applicant CDC for a period of twenty-four months.

Commentors in the last category were generally opposed conceptually to Multi-State expansions but also recognized the failure of CDCs incorporated in the States where the under-served counties were located to provide adequate access to the 504 Program in these under-served areas. One commentor stated: ''There are a few cases where entire States are substantially under-served by 504. It is my opinion that in these States local, regional and statewide initiatives have failed to invest sufficient resources needed to insure the operation of a successful program. This is not the responsibility of SBA nor is it SBA's fault.'' While reluctant to accept the concept of Multi-State CDCs, they support the organizational restrictions in the Proposed Rule. A commentor stated that ''Overall, I believe the Agency has done an excellent job on the proposed rules for multi-state CDCs, and if anything, did not go far enough.'' Another commented: ''If it's determined that a multi-state CDC is a necessity * * * the safeguards in the Proposed Rule are carefully drawn and we would support them.'' Another commentor agreed with SBA's requirement that a Multi-State CDC ''must abide by the same organizational rules, membership requirements, Board of Directors makeup, and uses of income. A CDC cannot truly serve an area of operations remote from the territory without local representation.'' Another expressed his concerns as follows: ''Our experience regarding multi-state CDCs demonstrates a need for better accountability, which could occur through local memberships, directors and loan review committees.''

Another set of comments in this category suggested a modification to the Proposed Regulations by recommending that the under-served counties that the Multi-State CDC could apply for had to be in a state that was contiguous to the Multi-State CDC's State of incorporation. The following are examples of comments that favored the addition of the concept of ''contiguous'' to the Area of Operations covered by Multi-State CDCs. One stated, ''I would strongly encourage you to add 'contiguous' to any application being considered for expansion * * * I think to remove contiguous totally takes our economic development identity, that is unique to the 504 program, and throws it in the trash. Any CDC that applies to cross state lines * * * in a non-contiguous basis, in almost every instance, is not concerned with economic development, they are concerned with money.'' Another stated, ''CDCs need to operate in a contiguous area * * * Each market area

requires a CDC to develop an understanding of the types of businesses, commercial lenders, etc. in that area. If a CDC's area is not contiguous then the CDC will try to standardize their lending process for all loans in all types of lending environments.''

SBA was persuaded by the rationale expressed in these comments and has decided to add to the Final Rule the requirement that any Multi-State expansion be into a ''contiguous'' state in order to further ensure the local focus. The change is also based, in part, on SBA's decision not to require Multi-State CDCs to have an equal number of Board Members in each state in which it operates. As a result of this change, it will now be possible for a Multi-State CDC to have a majority of Board Members from its State of incorporation control the out-of-state activities of the CDC. SBA believes this change makes it more important for SBA to monitor carefully how Multi-State CDC local activities are shaped by local members. Given this concern, SBA reasons that limiting Multi-State CDC expansions to states contiguous to its State of incorporation will serve several goals. First, the temporary CDC expansions discussed in the Proposed Rule that engendered the Multi-State CDC concept were all into contiguous states to the expanding CDC's State of incorporation. Second, it will limit the number of expansions, thus making it more likely that SBA will be able to carefully monitor all Multi-State CDC expansions. Third, the closer physical proximity of the home office to the out-of-state operations will make it more likely that members will have some familiarity with the markets in each state covered by the CDC and will participate in scheduled meetings, thus facilitating the development of local strategies appropriate for each community the CDC covers. This will help ensure that corporate policy does not favor the CDC's Area of Operations in its State of incorporation over the Multi-State areas in the contiguous states. Thus, when the Executive Director or full Board vote on matters, their understanding of all markets the CDC covers will be stronger as a result.

However, in order to give more specialized consideration to the issue of whether CDCs should be allowed to expand into non-contiguous states, SBA will include questions related to this topic in the ANPR that it intends to publish shortly. SBA also intends to use the ANPR process to solicit opinions regarding whether CDCs that are approved to operate across state lines as Multi-State CDCs should then also be eligible to expand into contiguous local economic development areas under the regulations regarding those expansions.

c. Other

SBA initially proposed to limit the eligibility of counties to be included in an applicant CDC's or expanding CDC's Area of Operations to counties that had not become part of an Area of Operations of another CDC within the last 24 months. This proposed regulation was designed by SBA to permit a CDC to benefit from the upfront costs of establishing itself in a county. All comments were in favor of the new restriction. However, a few of the comments suggested that the timeframe of the restriction should be increased to 36 months. A representative comment states: ''After a new or expanding CDC is allowed to enter a county, the proposed regulation provides that another application will not be approved for 2 years. In our opinion, a CDC given a new county should be allowed 3 years before another CDC is allowed to operate in the county. The proposed 2 year period is insufficient. Generally, it takes 18 to 24 months just to establish the 504 program in a new market.'' SBA considered these comments but was not persuaded that the 24-month timeframe, which did not exist as a regulation previously, is not adequate.

SBA received several comments on SBA's Proposed Regulation that deleted the timeframe for the AA/FA to make his or her final decision on applications for a new CDC or an existing CDC to expand its Area of Operations requesting that the 504 Program retain a specific for such decisions. SBA understands the desire to have an identified timeframe and intends to use reasonable efforts to issue timely decisions. However, SBA anticipates that the Final Rule will significantly increase the volume and complexity of the applications and may involve many new policy considerations. Given these factors and SBA's limited staff, SBA believes that establishing a specific timeframe would not be feasible or desirable.

2. CDC Organization and Operational Requirements

The proposed amendments to § 120.820, § 120.822, § 120.823, § 120.824, and § 120.825 in the Proposed Rule relate to CDC organization and operational requirements. SBA received many comments and suggestions on the proposed changes covering CDC membership, Boards of Directors, and professional management and staff.

In this Final Rule SBA adopts the policies concerning a CDC's Board of Directors as set forth in the Proposed Rule, with one modification. In light of the comments received on the Proposed Rule and several other factors, as discussed below, SBA has decided to amend the Proposed Rule to allow a CDC Manager to serve on its Board of Directors.

In the Proposed Rule, SBA prohibited all CDC staff, including the CDC Manager, from serving on the CDC's Board. SBA proposed this because we were concerned about the apparent possible loss of Board objectivity and independence if a Board were comprised of a number of CDC employees. SBA was concerned that a Board comprised of such members would lack the detached objectivity necessary to evaluate properly the performance of the CDC. However, as addressed below, SBA has amended the Final Rule to allow the CDC Manager, as the only CDC staff member, to participate as a Board Member. SBA believes that this approach will allow us to account for the concerns expressed by commentors while not impacting a Board's ability to operate independently.

In response to the Proposed Rule, SBA received several comments supporting the prohibition against CDC staff and management serving on its Board. However, more than two-thirds of the comments indicated that requiring CDCs to remove CDC Managers from their Boards would disrupt unnecessarily CDC operations. Commenters stated that CDC Managers typically manage the delivery of many small business assistance programs, including the 504 loan program, making it impractical, and therefore disruptive, to prohibit a CDC Manager from serving on a Board which oversees the full compliment of a CDC's economic development programs. SBA is persuaded by these comments and now better understands how disruptive it could be to prohibit a CDC Manager from serving on the CDC's Board.

In addition, the comments suggested that allowing only one individual employed by the CDC, the CDC Manager, to serve on the Board would not affect a Board's objectivity and independence. SBA now agrees with this position. Currently, for each Board vote, SBA regulations require a quorum of 5 Directors. If only one of those Directors is an employee of the CDC, then it is unlikely that a Board's objectivity and independence would be compromised. The authority of all the other Directors to vote on, and their responsibility to monitor, CDC

operations will help assure that each Board decision is independent and objective.

SBA also notes that there are other protections in place that will help assure independent action by the Board even when a CDC Manager serves on it. First, each Board Member has a general fiduciary duty of care and good faith to the CDC. This duty applies to the CDC Manager if the Manager sits on the Board. Secondly, with the Final Rule SBA requires that each Board have a member, other than the CDC Manager, who has commercial loan experience. This will assure that the Directors who are not employees of the CDC will have the requisite expertise to objectively and independently evaluate loan decisions. Thirdly, with this Final Rule SBA prohibits a Board Member from being a contractor with the CDC. SBA has encountered situations where CDC Managers who serve as Directors have recommended that the CDC contract with them for certain services. SBA believes that such a recommendation could impact a Board's objectivity and independence. Therefore, when the CDC Manager is a contractor, the manager will not be permitted to serve on the CDC's Board.

In light of all of the above, in this Final Rule, SBA has decided to uphold the prohibition against CDC staff serving as Board Members, but has decided to permit the CDC Manager to serve on the Board, provided that the CDC Manager is not a contractor, or an associate of a contractor, of the CDC. SBA believes that this approach will allow CDCs to operate most efficiently and appropriately to manage the delivery of all of the CDC's economic assistance programs. In addition, SBA believes that having only one member of the Board employed by the CDC will not adversely impact the Board's objectivity and independence. Moreover, the other protections contained in the Final Rule (*e.g.*, the prohibition against contractors serving as Board Members) and the general fiduciary duties of Board Members will further protect the objectivity and independence of the Board.

As a result of some comments, SBA is clarifying the Proposed Rule regarding a CDC's Loan Committees. The Proposed Rule established requirements for CDC Loan Committees to ensure that those CDCs that operated with Loan Committees were also in compliance with the current regulations that require a vote by a quorum of the CDC's Board on every 504 loan approval or servicing action. Some comments indicated confusion as to what was meant by a Loan Committee. One commentor stated that ''We have a group of 30 Members of our Board of Directors that meet semi-annually. [Eleven] of those Board Members then meet as needed (once or twice a month) to approve loans and take servicing and collection actions, etc. These Loan Committee Members are elected by the full Board and are made up of the four required representative groups.'' What this commentor describes meets the current regulatory requirements for CDC Board loan approval and servicing actions. In the Proposed Rule, SBA intended to deal only with Loan Committees composed of non-Board Members whose actions must be ratified by a quorum of the CDC's Board in order to comply with the current regulations.

A few comments expressed concerns that the proposed required composition of the Loan Committee would be redundant to the requirements of the Board membership. One commentor stated that he did not ''understand the need for the Board to ratify the actions of the Loan Committee if the Loan Committee structure meets the make-up requirements of the 3 groups, has a quorum of at least 5, (and) has a lender at the meeting * * *'' SBA was persuaded by the comments of the need to clarify the definition of Loan Committee by adding ''non-Board Members'' to the definition in the Final Rule. Since the Board must ratify the decisions of the Loan Committee, SBA agrees that some of the requirements in the Proposed Rule may be eliminated. The final rule eliminates the requirement that the Loan Committee members represent three of the four membership groups. SBA believes that regulations governing Loan Committees are especially important for Multi-State CDCs because such regulations help ensure local involvement with CDC loan-making decisions. Since the requirements for the Board of Directors for Multi-State CDCs have been modified in the Final Rule, the role of Loan Committees in each State for a Multi-State CDC will have increased importance to assure the local influence over 504 loan decisions and to minimize concerns about the Multi-State CDC concept expressed.

In the Proposed Rule, SBA clarified under what circumstances a CDC may contract out its management and staffing functions. Some of the comments received indicated confusion regarding what was meant by contracts. The opening paragraph of the Proposed Rule states: ''CDCs may obtain, under written contract, marketing, packaging, processing, closing, or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations.'' This explanation was apparently not clear because a few commentors raised concerns about the requirement that SBA approve contracts entered into by a CDC for space, equipment, etc. One commentor stated: ''This type of micro-management is neither necessary nor within the spirit of SBA oversight.'' SBA agrees that this would indeed be micro-managing. The Final Rule adds language to clarify that contracts for other than staffing or management do not have to be reviewed and approved by SBA. In the Final Rule, SBA also is adding the word ''servicing'' since that was inadvertently omitted in the list of staff functions that may be contracted out. In the Preamble to the Proposed Rule, SBA stated that ''No contractor or Associate of a contractor may be a voting or non-voting member of the CDC's Board or Loan Committee.'' However, SBA also inadvertently omitted the phrase ''or non-voting'' from § 120.824(e) of the Proposed Rule. SBA has corrected this omission by adding the phrase ''or non-voting'' to § 120.824(f) of this Final Rule.

Many commentors were in favor of the Proposed Rule regarding a CDC's staff requirements. One commentor states, ''The proposed regulation gives further emphasis on full-time CDC management and on the manager being an employee, not a contractor. We heartily endorse this amendment and look forward to the enforcement of this regulation in the field.'' The following comment is representative of several CDCs' concerns about contracting: ''I believe it is very important that the CDC become independent of any affiliate * * * providing financial and management support as soon as deemed economically feasible by SBA upon its contract review as required every two years. This would avoid the possibility of the affiliate * * * rolling up its fee charges when the CDC starts to produce an income beyond the cost of the current contract. This could seriously inhibit the growth of the CDC and its services provided. I know this has happened in the past and is still (occurring).''

Several commentors were in support of the Proposed Rule with a modification. A typical comment follows: ''Our organization contracts with a local, one county, non-profit, economic development corporation. Because they have four employees, they can easily obtain health insurance, etc. for employees. We do not believe insurance companies will provide health insurance for a company with one employee. If they do, then the costs for the insurance will be higher.''

Another commentor is more specific: ''The staff [of the non-profit affiliate] is required to maintain individual daily logs, in hours, for each revenue center (SBA, EDA, USDA, and Indirect) that is being benefited to prevent overcharging any loan program. One of EDA's audit contentions was their funds supplemented the SBA 504 Loan Program. Subsequently, each program has its own balance sheet and operating statement and pays its fair share of the cost of the lending organization. Compliance is assured by an annual certified audit and agency review * * * We respond to the loan requests without regard for the specific loan program.''

SBA is persuaded by these comments and has modified the Final Rule to eliminate the requirement that the non-profit affiliate that is contributing staff to the CDC must be financially subsidizing the CDC's operations. SBA was originally concerned that the non-profit affiliate could overcharge the CDC for the contract staff. SBA is persuaded by the comments that SBA's review of such contracts will minimize such risk. SBA notes that, in its experience, non-profit affiliates have no history of overcharging CDCs for staff. SBA reasons that non-profit affiliates have less incentive to overcharge than profit-making entities which occasionally have been found by SBA to charge staff costs that may be inappropriate. Finally, SBA's current policy already requires SBA to pre-approve all CDC contracts for staff and management as well as review the contracts annually. At this time, SBA believes its continued review that its oversight responsibility make of staff and management contracts is appropriate to minimize the possibility of abuse. We intend, however, to further address this issue in the Agency's ANPR to be published soon.

Some of the comments were concerned with SBA's role in pre-approving and reviewing all management and staff contracts. SBA considered these comments but did not modify the Proposed Rule regarding SBA oversight responsibilities. SBA is the regulatory agency for CDCs and, as such, is responsible for overseeing and reviewing many aspects of a CDC's operations. When a CDC contracts out its staff and management requirements, SBA must review such contracts to satisfy its CDC oversight responsibilities. Otherwise, SBA would fail in its responsibility to review how a CDC is satisfying its most fundamental responsibilities to borrowers as required by SBA regulations.

Although, as mentioned previously, several commentors, were strongly in favor of contracts having a limited term, other commentors were concerned that the proposed restrictions would increase the cost of contracted services as well as limit the choice of contractors. A representative comment was the following: ''The time constraint—2 years—being the maximum length of a contract is far too short of a period of time. It is frequently normal and customary business practice to negotiate contract for services that exceed two years. We would urge SBA to avoid needless contract length regulation that could lead to higher costs and lower quality contract services for CDCs.'' SBA considered these comments and has modified the Proposed Rule to remove the time constraint initially proposed. SBA believes that other requirements in the Final Rule, such as the requirement that SBA review the contracts annually and the requirement that the contract clearly identify procedures satisfactory to SBA which permit the CDC to terminate the contract prior to its expiration date, are sufficient to monitor contractual relationships. SBA will continue to review the matter and intends to re-address this issue in the ANPR.

A few commentors wanted to continue to contract with for-profit affiliates that receive income from the CDC that exceeds the fees for actual services performed. SBA considered these comments but was not persuaded that the benefit to a CDC from such arrangements outweigh concerns about shifting 504 income to other entities. As a commentor that was concerned about the possible impact of aggressive contracting out explained: ''There are very profound factors which drive generally for-profit packagers and similar service providers to attempt, if you will, to take control of CDCs * * * the income potential is enormous in such a takeover, and SBA very properly guards against that * * * I would suggest that on this issue, fees for * * * services be limited to fees for services actually performed, for example hourly services. And that no rights to * * * income be permitted beyond the contracting term * * * The purpose * * * is to provide self sufficiency, the ability of the CDC to stand on its two feet. It's very easy in these relationships for the financial strength of the CDC to be drained in such a way that would make it, for all purposes, perpetually dependent on our contracting relationship.'' These comments mirror SBA's concerns. SBA believes that its Final Rule strikes an appropriate balance by continuing to allow CDCs to contract out for some services, when such strategy is efficient and cost-effective while assuring that such contracting out is appropriately monitored by SBA. SBA wants to ensure that CDCs are given every opportunity to become independent and self-sufficient.

As indicated throughout this preamble, working with the CDC industry and its trade association, SBA intends to continue its consideration of a number of issues affecting CDC program operations. In addition to the issues already cited, in the ANPR that the Agency intends to publish shortly, SBA will seek comments regarding whether and under what circumstances CDCs should be required to engage in or support economic development activities other than the 504 program; whether and under what circumstances CDCs should be allowed to participate in profit-making activities; and whether SBA should amend the existing standard for determining that an area is adequately served by the 504 program, among others.

3. A Section by Section Description of the Changes to the Proposed Rule

Section 120.802 Definitions. The definition of Multi-State CDC was modified to limit the States into which a CDC can apply to operate in as a Multi-State CDC to those States contiguous to the applicant CDC's State of incorporation.

Section 120.810 Applications for Certification as a CDC. The Final Rule modifies subparagraph (a) to reflect SBA's decision, based on the comments received, to allow a CDC to expand its Area of Operations into a county with a population of 100,000 or more that is already adequately served by only one existing CDC only when that CDC does not oppose the application. Also, subparagraph (a) was modified to allow loans made by a Multi-State CDC to be used when determining if a county is adequately served. Finally, subparagraph (a) was modified to prohibit applications to cover a county if the county has become part of a Multi-State CDC's Area of Operations within the last 24 months. This gives any CDC 24 months to fully establish its operations in a new county before another CDC can apply to operate in it. This change was made so that a Multi-State CDC's out-of-state operations would not be treated differently from the local operations of any other CDC. In the Proposed Rule, the 24-month grace period only applied when the county was part of a CDC's Area of Operations within its State of incorporation.

Section 120.820 CDC non-profit status. No changes from the Proposed

Rule. The requirement that the non-profit corporation be in good standing refers to its being in good standing with the State in which it is incorporated.

Section 120.822 CDC Membership. No changes from Proposed Rule.

Section 120.823 CDC Board of Directors. The Final Rule modifies the Proposed Rule to permit the CDC Manager to be a member of the CDC's Board of Directors, but specifies that the requirement that ''one Board Member with commercial loan experience'' be satisfied by a Board Member other than the CDC manager. The Final Rule continues to prohibit other CDC staff members from being on the Board of Directors. The Proposed Rule also was reworded to require that a Multi-State CDC meet the Board representation requirements for each State, rather than requiring it to have separate Boards for each State or to have proportional Board representation as discussed above.

In addition, the Final Rule removes the requirement that Loan Committee members represent three of the four membership groups. This change was made because the Board already has representation from at least three of the four membership groups and a quorum of Board Members must approve, through a Board resolution (SBA Form 1528), its CDC's application for SBA's guarantee of each Debenture the CDC issues to fund one of its 504 loans prior to the sale of that Debenture. Requiring Loan Committee members to live or work in the State where the project they are voting on is located assures that local citizens will be part of the approval process for each loan made in their community. The Final Rule clarifies that this regulation only applies to a Loan Committee comprised of non-Board Members. The phrase ''* * * no appearance of a conflict of interest'' is changed to ''no actual or apparent conflict of interest'' throughout to emphasize the fact that actual conflicts of interest are prohibited and not just apparent conflicts. The Final Rule also clarifies that Multi-State CDCs are required to have Loan Committees in each State in which the Multi-State CDC operates. As stated above, this will assure local citizen participation in the loan approval process for each loan made in their community.

Section 120.824 Professional management and staff. The Final Rule corrects a technical error and adds ''servicing'' back into the list of services a CDC may obtain under contract. It also splits subparagraph (a) into two sections ((a)(1) and (a)(2)) for ease of reading. The Final Rule removes the phrase ''that is financially subsidizing the CDC's operations'' from 120.824(a) thus removing the condition that a non-profit affiliate of the CDC financially subsidize it before the CDC can apply for the waiver set forth in the section. Paragraphs (c) through (e) were expanded to (c) through (f) and were broken down into smaller paragraphs and subparagraphs for ease of reading. The phrase ''or non-voting'' was added to (f).

Section 120.825 Financial ability to operate. No change from the Proposed Rule.

Section 120.835 Application to expand an Area of Operations. The Final Rule reorders the section so that requests from CDCs to expand into counties within their State of incorporation or into a Local Economic Area are covered in section 120.835(a), requests from CDCs to expand into Multi-State Areas are covered in Section 120.835(b), and the general requirements for both are covered in 120.835(c).

The Final Rule modifies the Proposed Rule to reflect SBA's decision, based on the comments it received, to accept a CDC's application for expansion into a county with a population of 100,000 or more that is already being adequately served by only one existing CDC only if the original CDC does not oppose the application. The Proposed Rule was modified to allow loans made by a Multi-State CDC to be used when determining if a county is adequately served. The Proposed Rule was modified to prohibit CDC applications for a county if the county has become part of a Multi-State's Area of Operations within the last 24 months. (See discussion of changes to the Proposed Rule pertaining to § 120.810 above.)

The Final Rule removes the requirement for equal representation of each State on the Boards of Multi-State CDCs because SBA believes meeting the minimum Board requirements for each State is enough to assure proper local participation.

Section 120.837 SBA decision on application for a new CDC or for an existing CDC to expand Area of Operations. The Final Rule removes the parentheses from around the list of SBA programs conferring some special status, and changes ''based solely on its activity'' to ''based solely on its activity and performance'' to clarify the concept. The Final Rule also clarifies that any special status that a CDC's has earned such as ALP or PCLP only applies in the State or States in which that status was earned.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Chapter 35)

The Office of Management and Budget reviewed this rule as a ''significant'' regulatory action under Executive Order 12866.

SBA has determined that this Final Rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. Currently, out of approximately 24 million small businesses in the United States, about 4,000 receive 504 loans annually. As described in the preamble, through this regulation, SBA hopes to increase the number of 504 loans made to small businesses. Even if SBA were to assume a generous result of a 20 percent increase in loans, it would only result in an annual increase of 800 loans per year. SBA does not consider this a significant impact on a substantial number of small entities. Other aspects of this rule clarify the management and structural requirements for CDCs. These aspects would have no economic impact on small entities, as they merely alter CDC requirements.

SBA has determined that this Final Rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

For purposes of Executive Order 12988, SBA certifies that this Final Rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this Final Rule has no federalism implications.

List of Subjects in 13 CFR Part 120

Loan Programs—business, small business.

For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634 (b)(6), 636(a) and (h), 696(3), and 697(a)(2).

2. Amend § 120.802 to revise the definition of Area of Operations and add definitions of Local Economic Area and Multi-State CDC in alphabetical order to read as follows:

§ 120.802 Definitions.

* * * * *

Area of Operations is the geographic area where SBA has approved a CDC's request to provide 504 program services to small businesses on a permanent basis.

* * * * *

Local Economic Area is an area, as determined by SBA, that is in a State other than the State in which an existing CDC (or an applicant applying to become a CDC) is incorporated, shares a border with the CDC's existing Area of Operations (or applicant's proposed Area of Operations) in its State of incorporation, and is a part of a local trade area that is contiguous to the CDC's Area of Operations (or applicant's proposed Area of Operations) within its State of incorporation. Examples of a local trade area would be a city that is bisected by a State line or a metropolitan statistical area that is bisected by a State line.

Multi-State CDC is a CDC that is incorporated in one State and is authorized by SBA to operate as a CDC in a State contiguous to its State of incorporation beyond any contiguous Local Economic Areas.

* * * * *

3. Revise § 120.810 to read as follows:

§ 120.810 Applications for certification as a CDC.

Applicants for certification as a CDC must apply to the SBA District Office serving the area in which the applicant has or proposes to locate its headquarters.

(a) An SBA District Office may accept an application for a county only if:

(1) There is no CDC that includes the county in its Area of Operations;

(2) Any CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the 24 months prior to SBA receiving a complete application from the applicant; and the county has not become part of another CDC's Area of Operations within the prior 24 months; or

(3) The county is part of the Area of Operations of only one CDC; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the prior 24 months of another CDC; the applicant is incorporated in the State where the county is located; and the CDC that includes the county in its Area of Operations submits a statement of no objection to the application.

(b) An applicant whose application has been accepted must then demonstrate that it satisfies the certification and operating criteria in §§ 120.820 through 120.829 and the need for 504 services in the Area Of Operations (if there is already a CDC in the Area of Operations, the applicant must justify the need for another and present a plan to avoid duplication or overlap). Applications must also include an operating budget approved by the applicant's Board of Directors, and a plan to meet CDC operating requirements (without specializing in a particular industry). An applicant's proposed Area of Operations may include Local Economic Areas. An applicant may not apply to cover an area as a Multi-State CDC. The AA/FA shall make the certification decision.

4. Revise § 120.820 to read as follows:

§ 120.820 CDC non-profit status.

A CDC must be a non-profit corporation in good standing. (For-profit CDCs certified by SBA prior to January 1, 1987 may retain their certifications.) An SBIC may not become a CDC.

5. Revise § 120.822 to read as follows:

§ 120.822 CDC membership.

(a) A CDC must have at least 25 members (or stockholders for for-profit CDCs approved prior to January 1, 1987). The CDC membership must meet annually. No person or entity may own or control more than 10 percent of the CDC's voting membership (or stock). Members must be representative of and provide evidence of active support in the Area of Operations. Members must be from each of the following groups:

(1) Government organizations responsible for economic development in the Area of Operations and acceptable to SBA;

(2) Financial institutions that provide commercial long term fixed asset financing in the Area of Operations;

(3) Community organizations dedicated to economic development in the Area of Operations such as chambers of commerce, foundations, trade associations, colleges, or universities; and

(4) Businesses in the Area of Operations.

(b) A CDC that is incorporated in one State and is operating as a Multi-State CDC in another State must meet the membership requirements for each State.

6. Revise § 120.823 to read as follows:

§ 120.823 CDC Board of Directors.

The CDC must have a Board of Directors chosen from the membership by the members, and representing at least three of the four membership groups. No single group shall control. No person who is a member of a CDC's staff may be a voting member of the Board except for the CDC manager. The Board Members must be responsible officials of the organizations they represent and at least one member other than the CDC manager must possess commercial lending experience. The Board must meet at least quarterly and shall be responsible for CDC staff decisions and actions. A quorum shall require at least 5 Directors authorized to vote. When the Board votes on SBA loan approval or servicing actions, at least one Board Member with commercial loan experience acceptable to SBA, other than the CDC manager, must be present and vote. There must be no actual or apparent conflict of interest with respect to any actions of the Board.

(a) The Board may establish a Loan Committee of non-Board Members that reports to the Board. Loan Committee members must include at least one member with commercial lending experience acceptable to SBA. All members of the Loan Committee must live or work in the Area of Operations of the State where the 504 project they are voting on is located unless the project falls under one of the exceptions listed in Sec. 120.839, Case-by-case extensions. No CDC staff may serve on a Loan Committee. A quorum must have at least five committee members authorized to vote. The CDC's Board must ratify the actions of any Loan Committee. There must be no actual or apparent conflict of interest with respect to any actions of the Loan Committee.

(b) If the CDC is incorporated in one State and is approved as a Multi-State CDC to operate in another State, the CDC must meet the Board requirements for each State and must have a Loan Committee for each State.

7. Revise § 120.824 to read as follows:

§ 120.824 Professional management and staff.

A CDC must have full-time professional management, including an Executive Director (or the equivalent) managing daily operations. It must also have a full-time professional staff qualified by training and experience to market the 504 Program, package and process loan applications, close loans, service, and, if authorized by SBA, liquidate the loan portfolio, and sustain a sufficient level of service and activity in the Area of Operations. CDCs may obtain, under written contract, marketing, packaging, processing, closing, servicing or liquidation services provided by qualified individuals and entities who live or do business in the CDC's Area of Operations under the following circumstances:

(a) The CDC has at least one salaried professional employee that is employed

directly (not contracted) full-time to manage the CDC. A CDC may petition SBA to waive the requirement of at least one full-time manager if:

(1) The CDC is rural and has insufficient loan volume to justify its own management, and another CDC located in the same general area will provide the management; or

(2) The management of a CDC is to be contributed by a non-profit affiliate of the CDC that has the economic development of the CDC's Area of Operations as one of its principal activities. In the latter case, the management contributed by the affiliate may work on and operate other economic development programs of the affiliate, but must be available to 504 customers during regular business hours.

(b) SBA must pre-approve contracts the CDC makes for managing, marketing, packaging, processing, closing, servicing, or liquidation functions. (CDCs may contract for legal and accounting services without SBA approval, except for legal services in connection with loan liquidation or litigation.)

(c) Contracts must clearly identify terms and conditions satisfactory to SBA that permit the CDC to terminate the contract prior to its expiration date on a reasonable basis.

(d) The CDC must provide copies of these contracts to SBA for review annually.

(e) If a CDC's Board believes that it is in the best interest of the CDC to contract for a management, marketing, packaging, processing, closing, servicing or liquidation function, the CDC's Board must explain its reasoning to SBA. The CDC's Board must demonstrate to SBA that:

(1) The compensation under the contract is only from the CDC, reasonable and customary for similar services in the Area of Operations, and is only for actual services performed;

(2) The full term of the contract (including options) is reasonable; and

(3) The contract does not evidence any actual or apparent conflict of interest or self-dealing on the part of any of the CDC's officers, management, and staff, including members of the Board and any Loan Committee.

(f) No contractor (under this section) or Associate of a contractor may be a voting or non-voting member of the CDC's Board.

8. Revise § 120.825 to read as follows:

§ 120.825 Financial ability to operate.

A CDC must be able to sustain its operations continuously, with reliable sources of funds (such as income from services rendered and contributions from government or other sponsors). Any funds generated from 503 and 504 loan activity by a CDC remaining after payment of staff and overhead expenses must be retained by the CDC as a reserve for future operations or for investment in other local economic development activity in its Area of Operations. If a CDC is operating as a Multi-State CDC, it must maintain a separate accounting for each State of all 504 fee income and expenses and provide, upon SBA's request, evidence that the funds resulting from its Multi-State CDC operations are being invested in economic development activities in each State in which they were generated.

9. Revise § 120.835 to read as follows:

§ 120.835 Application to expand an Area of Operations.

An existing, active CDC applying to expand its Area of Operations must be operating in conformance with all existing SBA regulations, policies, and performance benchmarks and be well qualified to serve the proposed area. A CDC seeking to expand its Area of Operations must apply in writing to the SBA District Office where the CDC is headquartered, unless it is applying to be a Multi-State CDC. In that case, the CDC must apply to the SBA District Office that services the area where the Multi-State CDC intends to locate its principal office for that State.

(a) An SBA District Office may accept a CDC's application to expand its Area of Operations into a county within its State of incorporation, or in a Local Economic Area only if:

(1) There is no CDC that includes the county in its Area of Operations; or

(2) Any CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the 24 months prior to SBA receiving a complete application from the applicant CDC; and the county has not become part of an Area of Operations of another CDC within the prior 24 months; or

(3) The county is part of the Area of Operations of only one CDC; the county has a population of 100,000 or more; the county has not become part of an Area of Operations within the prior 24 months of another CDC; the applicant is incorporated in the State where the county is located; and the CDC that includes the county in its Area of Operations submits a statement of no objection to the application.

(b) An SBA District Office may accept a CDC's application to expand and service an area as a Multi-State CDC only if:

(1) There is no CDC that includes the county in its Area of Operations, or the CDCs that include the county in their Areas of Operations have not averaged together at least one 504 loan approval per 100,000 population per year averaged over the previous 24 months prior to SBA receiving a complete application from the applicant CDC; and the county has not become part of an Area of Operations of another CDC within the last 24 months; and

(2) The State it seeks to expand into is contiguous to the State of the CDC's incorporation; and

(3) The requirements in Section 120.822, Membership, are separately met for the Area of Operations within the CDC's State of incorporation and for each State in which it operates or seeks to operate as a Multi-State CDC; and

(4) The requirements in Section 120.823, Board of Directors, are separately met for the State of incorporation and each additional State in which it operates or seeks to operate as a Multi-State CDC; and

(5) The CDC has a Loan committee meeting the requirements of § 120.823(b).

(c) An applicant whose application for expansion has been accepted must demonstrate to the satisfaction of SBA that it satisfies all of the certification and operating criteria in §§ 120.820 through 120.829. It must demonstrate that it has the ability to provide full service to small businesses in the requested area including processing, closing, servicing, and, if authorized, liquidating 504 loans. It must also demonstrate the need for 504 services in the Area of Operations and present a plan for servicing the area. If there is already one or more CDCs in the requested Area of Operations, the applicant must justify the need for another.

10. Revise § 120.837 to read as follows:

§ 120.837 SBA decision on application for a new CDC or for an existing CDC to expand Area of Operations.

The processing District Office must solicit the comments of any other District Office in which the CDC operates or proposes to operate. The processing District Office must determine that the CDC is in compliance with SBA's regulations, policies, and performance benchmarks, including pre-approval and annual review by SBA of any management or staff contracts, and the timely submission of all annual reports. In making its recommendation on the application, the District Office

may consider any information presented to it regarding the requesting CDC, the existing CDC, or CDCs that may be affected by the application, and the proposed Area of Operations.

(a) The SBA District office will submit the application, recommendation, and supporting materials within 60 days of the receipt of a complete application from the CDC to the AA/FA, who will make the final decision. The AA/FA may consider any information submitted or available related to the applicant and the application.

(b) If a CDC is approved to operate as a Multi-State CDC, any unilateral authority that a CDC has in its State of incorporation under any SBA program, including Accredited Lender's Program (ALP), Premier Certified Lenders Program (PCLP), or Expedited Closing Process (Priority CDC), does not carry over into a State in which it is approved to operate as a Multi-State CDC. The CDC must earn the status in each State based solely on its activity and performance in that State.

Dated: June 28, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–16842 Filed 7–10–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

[T.D. 00–44]

Country of Origin Marking Rules for Textiles and Textile Products Advanced in Value, Improved in Condition, or Assembled Abroad

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This notice advises the public that Customs will no longer apply 19 CFR 12.130(c) for purposes of country of origin marking of textiles and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States (HTSUS), does not apply for country of origin marking purposes.

EFFECTIVE DATE: October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

SUPPLEMENTARY INFORMATION:

Background

In T.D. 85–38, 50 FR 8710 (March 5, 1985), Customs adopted as a final rule an interim amendment to the Customs Regulations, consisting of the addition of a new section 12.130 (19 CFR 12.130) to establish criteria to be used in determining the country of origin of imported textiles and textile products for purposes of multilateral and bilateral textile agreements entered into by the United States pursuant to section 204, Agricultural Act of 1956, as amended. In T.D. 85–38, Customs stated that section 12.130 is applicable to merchandise for all purposes, including duty and marking. A similar statement was made in T.D. 90–17, 55 FR 7303 (March 1, 1990).

Paragraph (c)(1) of section 12.130 provides in part as follows:

> * * * In order to have * * * a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, may not, upon its return to the U.S., be considered a product of the U.S.

Paragraph (c)(2) of section 12.130 accords essentially the same treatment to products of insular possessions.

Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, (Note 2(a)), provides in pertinent part as follows:

> * * * Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article.

Subsequently, in connection with the development of the final NAFTA Marking Rules, Customs concluded that Note 2(a) should not apply for general country of origin purposes, including marking. 60 FR 22312, 22318 (May 5, 1995). Accordingly, in order to clarify the applicability of this position for marking purposes, on June 15, 1998, Customs published a notice of proposed interpretation (hereinafter ''proposed interpretation'') in the **Federal Register** (63 FR 32697) to the effect that section 12.130(c) of the Customs Regulations should not control for purposes of determining the country of origin marking of textile and textile products, and that Note 2(a) does not apply for country of origin marking purposes. The notice solicited public comments on the proposal, and the public comment period was extended to December 18, 1998.

Discussion of Comments

A total of 7 entities submitted comments in response to the notice. Although all of the commenters were generally supportive of the proposed interpretation, two were opposed to the proposal as it pertains to textiles whose origin is determined by where the fabric is formed. The specific points made by the commenters are discussed below.

Comment: Several comments were received on particular operations that should or should not be allowed abroad in order for a U.S.-origin textile or textile product to remain of U.S. origin. One commenter strongly supports the proposed interpretation since minor operations performed on U.S. garments abroad should not force a change in origin solely because of 19 CFR 12.130(c). This commenter stated that imported articles that undergo a similar process in the United States do not undergo a change in origin in the United States. Another commenter supports the proposed interpretation as it would permit apparel produced in the United States that is exported for minor finishing operations such as silk screening, embroidery, stone washing, etc., to better compete against foreign competition.

Another commenter states that textiles and textile products made in the United States and sent abroad to be advanced in value or improved in condition should be considered products of the United States for marking purposes provided they: (a) ''Do not undergo a change of tariff heading (sic) at the eight digit level; (b) do not otherwise undergo a substantial transformation; and (c) undergo no assembly operation while abroad.'' The commenter states that if decorative components such as epaulets, patches, flaps, etc. are added to a U.S.-origin article while abroad, the article should still be able to be marked as a product of the United States. Other foreign operations that should be allowed without the U.S.-made article losing its origin are suggested to be washing, printing, painting, garment dyeing, and embroidery. The commenter also states that value-added criteria should not be considered in determining how articles shall be marked.

Customs Response: The textile rules of origin of section 334 of the Uruguay Round Agreements Act (URAA) (codified at 19 U.S.C. 3592), as implemented by section 102.21 of the Customs Regulations, are in most cases determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad. Therefore, the origin rules provided for

in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product under those rules by virtue of the processing performed abroad. In response to the commenter's statement that U.S. textiles and textile products should not be considered U.S. products for marking purposes if they undergo a tariff change at the eight digit level, Customs presumes the commenter means from one eight digit classification to another eight digit classification. In examining 19 CFR 102.21, Customs notes that there are limited instances where a change is allowed at the eight digit level. However, these rules reflect section 334 of the URAA, as amended by the ''Trade and Development Act of 2000'', Public Law 106–200, 114 Stat. 251 (May 18, 2000).

In reference to the commenter's statement that U.S. textiles and textile products should not be considered U.S. products if they undergo a substantial transformation abroad, Customs simply notes that section 334 of the URAA, as amended, represents the view of Congress on how the substantial transformation principle should be applied. *See* T.D. 95–69, 60 FR at 46195. Therefore, to the extent that a U.S. textile product undergoes a change in origin abroad as set forth in 19 CFR 102.21, it would be considered a foreign product for marking purposes. Additionally, Customs notes that, in general, the textile rules of origin at 19 CFR 102.21 provide that the complete assembly of two or more integral components in a single country will result in a change in origin, thereby requiring most U.S. textile products that are assembled abroad to be marked as foreign articles.

Furthermore, under the 19 CFR 102.21 rules, the attachment of minor decorative components to a U.S. textile product while abroad would not result in a change in origin. For example, affixing an emblem classified in heading 5810, HTSUS, to a U.S. T-shirt classified in heading 6109, HTSUS, in a foreign country would not result in a change in the T-shirt's origin. 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6101–6117. Therefore, the U.S. T-shirt may be returned as a product of the United States, and would not be required to be marked as a foreign article for purposes of 19 U.S.C. 1304 as previously required by 19 CFR 12.130(c). However, the T-shirt would be required to be labeled in accordance with the Textile Fiber Products Identification Act which is within the jurisdiction of the Federal Trade Commission (see further discussion below). Customs also notes that a U.S. T-shirt sent abroad for silk-screening, painting, or printing would also not change origin by virtue of these processes occurring, and the returned T-shirt would not be required to be marked as a foreign article. A similar result would apply to U.S. jeans which are washed, stone-washed, dyed, or embroidered abroad. However, U.S. T-shirt components or jean components sent abroad for assembly into T-shirts or jeans would change origin as a result of the assembly and would require marking as a foreign article pursuant to 19 CFR 102.21.

The tariff shift rules at 19 CFR 102.21 also do not include value-added criteria. To the extent that origin may not be determined under the applicable tariff shift rule of 19 CFR 102.21(e), the origin is determined by referring to the country in which the ''most important assembly or manufacturing process occurred''.

Comment: Two comments were received concerning the application of the proposed interpretation as it would pertain to textiles whose origin is determined by where the fabric is formed. One commenter opposes the proposed interpretation as it would apply to articles such as scarves, handkerchiefs, and bandannas. The other commenter opposes the proposed interpretation as it would apply to household linens and apparel accessories made overseas with domestic fabric. The commenters claim that the proposed interpretation would allow U.S.-made woven fabric made into scarves, *etc.* abroad to be labeled with a qualified ''Made in U.S.A.'' statement, while scarves, *etc.* made in the United States using foreign-made woven fabric would have to be labeled as being of foreign origin pursuant to 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6215–6217(2). It is stated that domestic manufacturers of scarves, etc. use both domestic and imported fabric. The fabric may be imported in a finished or greige condition, and may be bleached, dyed and/or printed in the United States. The finished fabric is also cut and sewn to manufacture scarves, etc. It is claimed that this would place domestic manufacturers at a significant competitive disadvantage, because if imported finished fabric or greige fabric is used and made into scarves in the United States, for example, the article is required to be marked as a foreign article. The commenters state that the purpose of the marking statute, 19 U.S.C. 1304, is to let the consumer know when they are purchasing foreign-made products, and that the proposed interpretation ignores this purpose. It is claimed that the fact the Federal Trade Commission will require some form of qualification does not really eliminate the potential of consumer deception. Therefore, these commenters suggest a modification to the proposed interpretation to exclude household linens and apparel accessories.

However, a third comment from a domestic manufacturer of bedding and bath products supports the proposed interpretation and believes that its adoption is necessary to ensure the uniform application of the country of origin rules for textile products promulgated pursuant to 19 U.S.C. 3592. The commenter claims that 19 CFR 12.130(c) contradicts the intent of Congress as set forth in 19 U.S.C. 3592 which provides that the textile rules of origin shall govern for the purposes of the Customs laws and the administration of quantitative restrictions, and 19 U.S.C. 3592(b)(2)(A) provides that the origin of certain products, such as sheets, shall be the country in which the fabric was formed. The commenter submits that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, and that the country of origin rules governing textile products should be uniformly applied for country of origin marking purposes. This commenter states that it has invested in state-of-the art equipment for weaving fabric from raw cotton and man-made fibers and that these investments have allowed them to compete in the world marketplace. The commenter claims that with the enactment of 19 U.S.C. 3592, it is appropriate to re-examine T.D. 85–38 and T.D. 90–17 to assess what statutory policies are being furthered by the application of 19 CFR 12.130(c) to textile products such as sheets that are produced abroad from U.S.-origin fabric.

Customs Response: Customs is of the opinion that 19 CFR 12.130(c) should no longer be applied for country of origin marking purposes. Section 12.130(c) states that merchandise which falls within the ''purview of Chapter 98, Subchapter II, Note 2, HTSUS,'' may not, upon its return to the U.S., be considered a product of the United States. As suggested by the supporting commenter that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, Customs notes that the returned article need not necessarily be classifiable in Chapter 98, but must only be within the purview of Note 2. For example, U.S. greige fabric dyed abroad would not be classifiable in Chapter 98, but rather would be fully dutiable. *See Dolliff & Company, Inc.* v. *United States,* 455 F. Supp. 618 (CIT

1978), *aff'd,* 599 F.2d 1015 (Fed. Cir. 1979). However, the returned dyed fabric would be within the purview of Note 2 as it is a U.S. product sent abroad and advanced in value. Therefore, under the position stated in T.D. 85–38 and in T.D. 90–17, the returned fabric would be required to be marked as a foreign article. Because Customs applied section 12.130(c) for marking purposes due to the statements made in T.D. 85–38 and T.D. 90–17, 19 CFR 12.130(c) should no longer apply for country of origin marking purposes in light of the comments supporting the proposed interpretation, and in light of Customs previous statements made in connection with the NAFTA Marking Rules. 60 FR 22312, 22318 (May 5, 1995).

In regard to the marking of scarves, handkerchiefs, bandannas, household linens, *etc.,* since 19 U.S.C. 3592 sets forth the rules of origin for textile and apparel products for purposes of the customs laws, Customs lacks authority to carve out any exception for these articles. However, Customs notes that with the passage of the ''Trade and Development Act of 2000'', in particular section 405, some of the concerns raised by the commenter appear to have been alleviated as certain fabrics and articles will no longer be considered to originate where the fabric is made.

Comment: One commenter submits that 19 CFR 12.130(c) should no longer apply for country of origin marking purposes and for quota purposes. The commenter states that T.D. 85–38 was promulgated to prevent the circumvention of visa or export license requirements contained in multilateral and bilateral textile restraint agreements. The commenter notes that the Tariff Act of 1930 never addressed issues concerning country of origin determinations for quota purposes. Nonetheless, this rule was applied for marking and quota purposes because Customs believed that Congress did not intend Customs to apply one rule of origin for duty and marking purposes and a different rule for quota purposes.

This commenter states that it is unaware of any bilateral agreement that requires the imposition of quota restraints on products that are deemed to be of U.S. origin pursuant to the rules set forth in 19 CFR 102.21(e). As an example, the bilateral textile agreement negotiated between the United States and Fiji is presented, which requires Fiji to limit exports to the United States of cotton and man-made fiber textile and textile products of Fiji. The commenter notes that if a sheet is produced in Fiji using Australian fabric, Fiji would not possess authority to limit the exports of such sheets to the United States; however, it presently would if U.S. fabric were used, thus placing U.S. fabric manufacturers at a competitive disadvantage to fabric producers in nonquota countries such as Australia.

Another commenter questions whether Customs would still require a textile visa for textiles and textile products under the new proposed position.

Customs Response: With regard to the comments received regarding the applicability of 19 CFR 12.130(c) for quota purposes, we note that this would be more appropriately addressed to the Committee for the Implementation of Textile Agreements which issues instructions concerning these issues.

Comment: The Federal Trade Commission (FTC) notes that with respect to marking, the ordinary textile rules of origin, prescribed in 19 U.S.C. 102.21, as interpreted by Customs, would apply, but that the Textile Fiber Products Identification Act (TFPIA), set forth at 15 U.S.C. 70 *et seq.*, and the FTC rules implementing the TFPIA, set forth at 16 CFR Part 303, would also still apply.

The FTC states that the TFPIA requires that textile products be labeled to show the country of origin, whether domestic or foreign. 15 U.S.C. 70b(b)(4)&(5). The FTC rules implement the statutory requirement; explain how it applies to products made, in part, in the U.S. and, in part, in another country; and provide examples of proper labeling. 16 CFR 303.33. Therefore, under the TFPIA, imported textile products must name the country where they were manufactured or processed. Textile products made in the United States of materials also made in the United States should be labeled as ''made in USA'', or words to that effect. Products made in the United States of imported materials should disclose both the U.S. manufacturing and the imported component—for example, ''Made in USA of imported fabric'' or ''Knitted in USA of imported yarn.'' Similarly, textile products partially manufactured in a foreign country and partially manufactured in the United States should be labeled to show the manufacturing process both in the foreign country and in the United States—for example, ''Imported cloth, finished in USA,'' ''Sewn in USA of imported components,'' or ''Made in (foreign country), finished in USA.'' The rules state further that for purposes of determining how a particular product should be labeled, a manufacturer needs to consider the origin of only those materials that are covered under the TFPIA (*i.e.,* those made of textile fibers) and that are one step removed from that manufacturing process (*i.e.,* a fabric manufacturer must identify imported yarn; a garment manufacturer must identify imported fabric).

The FTC also provides several examples of how it would view the labeling requirements of textile products made in the United States which are sent abroad for some additional finishing process, where there is no change in origin under 19 CFR 102.21. When there is no change in origin, some returned U.S. articles may simply be labeled ''Made in USA,'' but some additional foreign processes may have to be disclosed on the label. The FTC states that in many cases if the foreign processing is sufficiently minimal, disclosure would not be necessary for compliance with the TFPIA and the rules. Such processes would include: various kinds of washing or wet processing (stone washing, enzyme washing, acid washing, sizing, starching, *etc.*); dyeing or bleaching; application of ink designs (heat transfer or screen printing); pressing (including permapressing and similar processes to make apparel wrinkle free); repairs or alterations; tagging or labeling; closure of single-component knit products (such as hosiery); adding or changing buttons; and boarding (adding cardboard to give the garment shape). These processes, although they enhance the value of the goods, do not alter the basic identity or character of the product.

The FTC states that the addition of ornamentation or decorative trim that involves adding textile fibers to a textile product (by embroidery, for example) is addressed in 16 CFR 303.12 and 303.26. If such trim or ornamentation either (a) does not exceed 15 percent of the surface area of the item, or (b) does not exceed 5 percent of the product's fiber weight, it is exempt from the rules' fiber content disclosure requirement. If exempt from fiber content disclosure, it is also exempt from origin disclosure if added in another country. If the decorative trim or ornamentation is more than 15 percent of the surface area and more than 5 percent of the product's fiber weight, and is applied in another country, the foreign processing would have to be disclosed (for example, ''Made in USA, embroidered in Mexico'').

In those situations where the foreign processing is more than minimal finishing of an already finished article, disclosure of the foreign processing would be required. 16 CFR 303.33(a)(4). For example, if components of a garment are manufactured in the U.S., but the garment is assembled elsewhere, both aspects of the origin would have to

be disclosed (*e.g.,* ''Assembled in Mexico of U.S. Components'').

Customs Response: Customs appreciates the FTC's comments which clarify the marking requirements under the TFPIA. Further clarification of the rules administered by the FTC may be obtained by writing to: Textile Program, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580.

Conclusion

After analyzing the comments received and further consideration of the matter, Customs has decided to adopt the proposed interpretation that 19 CFR 12.130(c) does not apply for purposes of country of origin marking. As noted above, the textile rules of origin of 19 U.S.C. 3592, as amended, and as implemented by 19 CFR 102.21, will be determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad and that is described in those statutory and regulatory provisions. Therefore, the origin rules provided by statute and in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product by virtue of the processing performed abroad. Moreover, it should be noted that even if the U.S. textile product does not require labeling as a foreign product under those provisions, the interpretation adopted in this document does not exempt textile and apparel products imported into the United States from the labeling requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, enforced by the Federal Trade Commission.

Approved: April 14, 2000.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–17461 Filed 7–10–00; 8:45 am]

BILLING CODE 4820–02–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

Rules of Practice Governing Board Review of Federal Aviation Administration Emergency Determinations in Air Safety Enforcement Proceedings

AGENCY: National Transportation Safety Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Administrator of the Federal Aviation Administration (FAA) has the statutory authority to issue orders amending, modifying, suspending, or revoking certain FAA-issued certificates, in the interest of safety in air commerce or air transportation. Such actions are appealable to the Board, and the filing of an appeal by the affected certificate holder stays the effectiveness of the Administrator's order, unless the Administrator determines that an emergency, requiring the order to be effective immediately, exists. Section 716 of the Aviation Investment and Reform Act for the 21st Century confers on the Board the authority to review such emergency determinations, which were not previously subject to administrative review, and these interim rules provide procedures for that review. Comments are invited and will be considered in the formulation of final rules.

DATES: These interim rules are effective on July 11, 2000. Comments are invited by July 26, 2000. Reply comments may be filed by August 10, 2000.

ADDRESSES: An original and two copies of any comments must be submitted to: Office of General Counsel, National Transportation Safety Board, Room 6401, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594, Attention: Emergency Procedure Rules.

FOR FURTHER INFORMATION CONTACT: Ronald S. Battocchi, General Counsel, (202) 314–6080.

SUPPLEMENTARY INFORMATION:

Background

The National Transportation Safety Board (NTSB) currently has rules, at 49 CFR part 821, that govern practice and procedure in certain air safety proceedings, including proceedings in which the FAA Administrator seeks to amend, modify, suspend or revoke various FAA-issued certificates or privileges. Under 49 U.S.C. 44709(d), such certificate actions are reviewable on appeal to the Board by the affected certificate holder. 49 U.S.C. 44709(e) provides that the filing of such an appeal stays the effectiveness of the Administrator's order, pending disposition of the appeal by the Board, unless the Administrator determines that an emergency exists and that safety in air commerce or air transportation requires the order to be effective immediately. Prior to the enactment of the Aviation Investment and Reform Act for the 21st Century (Pub. L. 106–181, signed into law April 5, 2000), the Administrator's emergency determinations were not subject to administrative review. Section 716 of Public Law 106–181 expands the Board's jurisdiction, by amending 49 U.S.C. 44709(e) to provide that a person affected by the immediate effectiveness of an order, based on the Administrator's finding of the existence of an emergency, may, not later than 48 hours after receiving the order, petition the Board to review that emergency determination, under procedures promulgated by the Board. 49 U.S.C. 44709(e), as amended, further provides that the Board shall dispose of the certificate holder's request for review of the Administrator's emergency determination no later than five days after the request is filed, and that, if the Board finds that an emergency does not exist, the immediate applicability of the Administrator's order shall be stayed. In light of the immediate effectiveness of Public Law 106–181, the Board is issuing interim rules to establish procedures for its review of the Administrator's emergency determinations, without notice and comment.

Public Law 106–181 also amends the time period for the Board to make final dispositions of appeals in all emergency cases. Under 49 U.S.C. 44709(e) prior to amendment, the Board had 60 days from the time the Administrator advised it of the existence of an emergency (by filing a complaint in response to the certificate holder's appeal) to make its final disposition of the appeal, whereas 49 U.S.C. 44709(e), as amended, requires a final disposition not later than 60 days after the date on which the appeal is filed. The interim rules include amendments to part 821 that were necessitated by this change.

Interim Rules

The Board believes that its current rules require certain immediate changes to accommodate these amendments to 49 U.S.C. 44709(e). These interim rules should permit the processing of any petitions for review of the Administrator's exercise of emergency authority that are instituted by affected certificate holders pursuant to the statutory amendments, while the Board has final rules under consideration.

Under the interim rules, the authority to review emergency determinations of the Administrator has been delegated to the Board's administrative law judges. The interim rules permit the Administrator to file a written reply to the certificate holder's petition for review of the emergency determination, and require the law judge to issue a

written order granting or denying the petition, based upon such written submissions by the parties. In view of the short five-day period which Public Law 106–181 mandates for the disposition of this issue, the interim rules provide that the law judge's decision on the issue is final, and not appealable to the Board. The placement of such review authority in the law judges is a matter subject to revisitation in the future, and the Board is particularly interested in comments on this. The Board is also interested in comments on the practicality and/or advisability of putting in place an appeal process that would permit a review of the law judge's ruling on the emergency issue by the Board, which would, of necessity, occur during the running of the 30-day period in which the case must proceed to hearing.

Aside from minor changes to 49 CFR 821.10, the general provision relating to computations of time in air safety proceedings before the Board, all of the revisions to part 821 necessitated by the amendments to 49 U.S.C. 44709(e) created by Public Law 106–181 appear in subpart I, which sets forth special rules applicable to appeals of emergency and other immediately effective orders issued by the Administrator.

The addition and logical placement of rules specifically relating to the disposition of petitions for review of the Administrator's emergency determinations have necessitated a restructuring of subpart I. Section 821.54, which contained general provisions relating to emergency cases, has been redesignated as § 821.52, with minor changes. Paragraphs (a) and (b) of § 821.55 have been removed from that section and recodified, with revisions, at § 821.53. Paragraph (b) of § 821.53 amends former paragraph (b) of § 821.55, by requiring appeals of emergency or other immediately effective orders to include a copy of the appealed order. Previously, it was sufficient for the certificate holder to indicate in the appeal that an emergency or other immediately effective order was the subject of the appeal. Former paragraphs (c) through (f) of § 821.55 have been redesignated as paragraphs (a) through (d) of that section.

A new § 821.54 sets forth the rules and procedures governing the Board's review of the Administrator's emergency determinations. Paragraph (a) of that section provides that a certificate holder has 2 days from the date on which he or she receives the Administrator's emergency or other immediately effective order to file with the Board a petition for review of the emergency determination. The Board believes the interim rule's 2 day time limit is a reasonable application of the new legislation's requirement that review of the Administrator's emergency determination ''shall be requested not later than 48 hours after the order is received'' by the affected certificate holder, and that the rule's use of a 2 day time frame, rather than one of 48 hours, avoids the possibility of having cases turn on inquiries as to the precise hour and minute the order was received and/or the petition was filed. Paragraph (a) further provides that, as the time limit for filing a petition for review of the emergency determination has been created by statute, the Board has no authority to extend it (whereas time limits created by the Board's rules may, for good cause shown, be extended pursuant to § 821.11). Similar language appears in the Board's rule relating to the filing of an application for fees and expenses under the Equal Access to Justice Act (see 49 CFR 826.24(a)). Finally, paragraph (a) provides that, in those cases where a certificate holder files a petition for review of an emergency determination, but has not previously submitted an appeal from the emergency or other immediately effective order, the petition will also be regarded as a simultaneously-filed appeal from the order.

In the remainder of § 821.54, paragraph (b) provides rules as to the form, content, and service of the certificate holder's petition, and requires that the petition include a copy of the Administrator's order. Paragraph (c) provides for the submission of a reply to the petition by the Administrator. Rules governing the law judge's disposition of the petition are set forth in paragraphs (d) and (e), and the effects of the law judge's ruling are enumerated in paragraph (f). Under paragraph (e), the petition is to be disposed of by written order, and the standard to be applied is whether, based on the acts and omissions of the certificate holder as alleged in the complaint, the Administrator abused his or her discretion in determining that an emergency exists, requiring the order to be effective immediately. Since issues of fact are properly resolved at an evidentiary hearing, challenges to the truthfulness of the factual allegations appearing in the Administrator's order are not appropriate for this preliminary inquiry; thus, paragraph (e) provides that, for purposes of deciding this emergency issue, the law judge is to assume the truth of the factual allegations stated in the order. The abuse of discretion standard set forth in paragraph (e) is adopted from the United States Court of Appeals for the Ninth Circuit, which used that criteria when presented with a challenge to the Administrator's exercise of emergency authority in *Nevada Airlines* v. *Bond,* 622 F.2d 1017 (1980). In paragraph (f), it is provided that, if the petition is granted, the effectiveness of the Administrator's order will be stayed until the Board makes a final disposition of the certificate holder's appeal. Since, in that instance, the certificate holder will not be deprived of the use of the certificate(s) affected by the order while the appeal is pending, the certificate holder will not be permitted to waive the applicability of the expedited appeals process of subpart I, unless the Administrator consents to such a waiver.

Paragraph (a) of § 821.55 (formerly paragraph (c) of that section), which provides rules for the filing and service of the Administrator's complaint, has been revised to include rules as to when the complaint is to be filed in those cases where there has been a challenge to the Administrator's emergency determination. In addition, paragraph (a) now requires that the complaint be filed with the Board by overnight delivery or facsimile, with service on the respondent by the same means. Minor changes have been made to paragraph (b) (formerly paragraph (d)) of § 821.55, and no substantive changes were made to paragraphs (c) and (d) (formerly paragraphs (e) and (f)) of that section.

Paragraph (a) of § 821.56, which sets forth rules and procedures regarding the issuance of notices of hearing in emergency cases, has been amended to take into account the new legislation's shortening of the time frame for the Board to make a final disposition of an appeal in an emergency case to 60 days after the date on which the certificate holder's appeal is filed (as opposed to 60 days from the date on which the Board is advised by the Administrator of the existence of an emergency, which was accomplished when the Administrator filed a complaint in response to the appeal). Paragraph (a) has also been amended to provide rules for the issuance of notices of hearing in those cases where the certificate holder has challenged the Administrator's determination as to the existence of an emergency, upon the disposition of that preliminary issue. There are no substantive changes to the remaining provisions of § 821.56. Section 821.57 has not been amended.

Related Matters

Since our part 821 rules were last amended, the statutes referred to in that

part—i.e., the Independent Safety Board Act of 1974; the Federal Aviation Act of 1958, as amended; and the FAA Civil Penalties Assessment Act of 1992—have been recodified, without substantive change, at 49 U.S.C. Chapters 11 (Sections 1101 *et seq.*), 447 (Sections 44701 *et seq.*), and 463 (Sections 46301 *et seq.*), respectively. Thus, the Board will, solely for ''housekeeping'' purposes, amend part 821, where necessary, to reflect the current statutory designations. In addition, Section 821.38(b), as currently written, contains a reference to ''§ 556(d) of the Administrative Procedure Act,'' while § 821.41 refers to another section of Administrative Procedure Act by its United States Code citation. For purposes of consistency, and to follow the preferred convention of using United States Code citations to reference statutory authority in agency rules, the statutory reference in § 821.38(b) will be amended to reflect the appropriate United States Code citation.

The rules, as currently written, also contain references to parties involved in these proceedings, and actions taken by them, with the designations ''he,'' ''him,'' and ''his.'' The Board believes that such terms should be changed to the more proper ''he or she,'' ''him or her,'' and ''his or hers,'' and these changes will be made in the housekeeping amendments, as well.

Because such housekeeping amendments do not substantively change the Board's part 821 rules, comments on these matters are not solicited.

List of Subjects in 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

For the reasons set forth in the preamble, part 821 of title 49 of the Code of Federal Regulations is amended as follows:

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

1. The authority citation for part 821 is revised to read as follows:

Authority: 49 U.S.C. 1101–1155, 44701–44723, 46301; unless otherwise noted.

2. In part 821, revise all references to ''he,'' ''him,'' and ''his,'' to read ''he or she,'' ''him or her,'' and ''his or her,'' respectively.

3. In part 821, revise all references to ''section 602(b) of the Act'' to read ''49 U.S.C. 44703(c),'' and revise all references to ''section 609 of the Act'' to read ''49 U.S.C. 44709.''

§ 821.1 [Amended]

4. In § 821.1, remove the paragraph defining the term ''Act;'' amend the paragraph defining the term ''Certificate'' by removing the words ''Title VI of the Act'' and inserting in their place the words ''49 U.S.C. Chapter 447;'' and amend the last sentence of § 821.1 by removing the words ''the Act'' and inserting in their place the words ''49 U.S.C. Chapters 11, 447, and 463.''

§ 821.3 [Amended]

5. In § 821.3, remove the words ''a new.''

§ 821.8 [Amended]

6. Amend paragraph (c) of § 821.8 by removing the words ''section 1005(b) of the Act'' and inserting in their place the words ''49 U.S.C. 46103(a).''

7. Revise § 821.10 to read as follows:

§ 821.10 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice or order of the Board or a law judge, or by any applicable statute, the date of the act, event, or default after which the designated period of time begins to run is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Board, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. In all cases, Saturdays, Sundays, and legal holidays for the Board shall be included in the computation of time, except they shall not be included in computations of time respecting petitions for review of determinations as to the existence of emergencies under § 821.54 in subpart I of this part.

§ 821.19 [Amended]

8. Amend paragraph (a) of § 821.19 by removing the words ''section 1004 of the Act'' and inserting in their place the words ''49 U.S.C. 46104.''

§ 821.38 [Amended]

9. Amend paragraph (b) of § 821.38 by removing the words ''§ 556(d) of the Administrative Procedure Act'' and inserting in their place the words ''5 U.S.C. 556(d) (Administrative Procedure).''

10. Revise subpart I to read as follows:

Subpart I—Rules Applicable to Emergency Proceedings and Other Immediately Effective Orders

Sec.
821.52 General.
821.53 Appeal.
821.54 Review of Administrator's determination of emergency.
821.55 Complaint, answer to complaint, motions, and discovery.
821.56 Hearing and initial decision.
821.57 Procedure on appeal.

§ 821.52 General.

(a) *Applicability.* This subpart shall apply to any order issued by the Administrator under 49 U.S.C. 44709: as an emergency order; as an order not designated as an emergency order, but later amended to be an emergency order; and any order designated as immediately effective or effective immediately.

(b) *Effective date of emergency.* The procedure set forth herein shall apply as of the date when written advice of the emergency character of the Administrator's order is first received and docketed by the Office of Administrative Law Judges or the Board.

(c) *Computation of time.* Time shall be computed in accordance with the provisions of § 821.10.

§ 821.53 Appeal.

(a) *Time within which to appeal.* The certificate holder may appeal within 10 days after the service of the Administrator's emergency or other immediately effective order. The certificate holder shall file an original and 3 copies of the appeal with the Office of Administrative Law Judges, and shall serve a copy of the appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action and indicate that an emergency or other immediately effective order is being appealed, and shall identify the issues of fact or law on which the appeal is based, and the relief sought. A copy of the order shall be attached to the appeal.

§ 821.54 Review of Administrator's determination of emergency.

(a) *Time within which to file petition.* The certificate holder may, within 2 days after receipt of the Administrator's emergency or other immediately effective order, petition the Board for review of the Administrator's determination that an emergency, requiring the issuance of an immediately effective order, exists. This 2 day deadline is statutory and the Board has no authority to extend it. If the certificate holder has not previously filed an appeal from the emergency or other immediately effective order, the petition shall also be considered a

simultaneously filed appeal from the order under § 821.53.

(b) *Form, content, and service of petition.* The petition may be in letter form. It shall identify the order from which review of the Administrator's exercise of emergency authority is sought, and a copy of the order shall be attached to the petition. The petition shall enumerate the specific grounds on which the certificate holder challenges the Administrator's determination that an emergency exists. In the event that the petition fails to set forth the specific grounds for the certificate holder's challenge to the Administrator's emergency determination, the petition shall be dismissed. The petition shall be served on both the Board and the Administrator via overnight delivery or facsimile.

(c) *Reply to petition.* Within 2 days after service of the petition, the Administrator may file a reply to the petition in support of his or her determination as to the existence of an emergency requiring the order to be effective immediately. Such reply shall be served on both the Board and the certificate holder via overnight delivery or facsimile. No written submissions other than the petition and reply shall be filed, except in accordance with paragraph (d) of this section.

(d) *Hearing.* No hearing shall be held on a petition for review of an emergency determination. However, a law judge may, on his or her own initiative, solicit from the parties additional information to supplement that provided in the petition and reply.

(e) *Disposition.* Within 5 days after receipt of the petition, the chief judge (or, if the case has been assigned, the law judge to whom the case is assigned) shall dispose of the petition by written order, finding whether the Administrator abused his or her discretion in determining that there exists an emergency requiring the order to be immediately effective, based on the acts and omissions alleged in the Administrator's order, assuming the truth of such factual allegations.

(f) *Effect of law judge's ruling.* If the law judge grants the petition, the effectiveness of the Administrator's order will be stayed until final disposition of the respondent's appeal by the law judge or the Board. In such cases, the remaining provisions of this subpart (§§ 821.55–821.57) shall continue to apply, and their applicability may not be waived by the respondent without the consent of the Administrator. If the petition is denied, the Administrator's order shall remain in effect, and the remaining provisions of this subpart shall continue to apply, unless respondent waives their applicability. The law judge's ruling on the petition shall be final, and is not appealable to the Board.

§ 821.55 Complaint, answer to complaint, motions, and discovery.

(a) *Complaint.* Within 3 days after receipt of the appeal, or within 3 days after service of a law judge's order disposing of a petition for review of the Administrator's emergency determination, whichever is later, the Administrator shall file with the Board via overnight delivery or facsimile, an original and 3 copies of the emergency or other immediately effective order as the complaint, and serve a copy on the respondent by the same means.

(b) *Answer to the complaint.* Within 5 days after service of the complaint upon respondent, he or she shall file an answer thereto, and serve a copy of the answer on the Administrator. Failure to deny any allegation or allegations of the complaint may be deemed an admission of the allegation or allegations not answered.

(c) *Motion to dismiss and motion for more definite statement.* No motion to dismiss or for a more definite statement shall be made, but the substance thereof may be stated in the respondent's answer. The law judge may permit or require a more definite statement or other amendment to any pleading at the hearing, upon good cause shown and upon just and reasonable terms.

(d) *Discovery.* Discovery is authorized in emergency or other immediately effective proceedings, and, given the short time available, parties are directed to cooperate to ensure timely completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in this subpart. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

§ 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Within 5 days of the receipt of respondent's appeal, or immediately upon the issuance of a law judge's order disposing of a petition for review of the Administrator's emergency determination (if later), the parties will be notified of the date, time and place of the hearing. The hearing shall be set for a date no later than 30 days after the filing of the appeal. To the extent not inconsistent with this section, the provisions of § 821.37(a) also apply.

(b) *Initial decision.* The initial decision shall be made orally on the record at the termination of the hearing and after opportunity for oral argument. The provisions of § 821.42(b) and (d) shall be applicable (covering content, furnishing a copy of the initial decision excerpted from the record, and issuance date).

(c) *Conduct of hearing.* The provisions of §§ 821.38, 821.39, and 821.40, covering evidence, argument and submissions, and record, shall be applicable.

(d) *Effect of law judge's initial decision.* If no appeal to the Board by either party, by motion or otherwise, is filed within the time allowed, the law judge's initial decision shall become final but shall not be deemed to be a precedent binding on the Board.

§ 821.57 Procedure on appeal.

(a) *Time within which to file a notice of appeal and content.* Within 2 days after the initial decision has been orally rendered, either party to the proceeding may appeal therefrom by filing with the Board and serving upon the other parties a notice of appeal. The time limitations for the filing of documents are not extended by the unavailability of the hearing transcript.

(b) *Briefs and oral argument.* Unless otherwise authorized by the Board, all briefs in emergency cases shall be served via overnight delivery or facsimile confirmed by first-class mail. Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. Within 7 days after service of the appeal brief, a reply brief may be filed, with copies served (as provided above) on other parties. The briefs shall comply with the requirements of § 821.48 (b) through (g). Appeals may be dismissed by the Board on its own initiative or on motion of a party, notably in cases where a party fails to perfect the notice of appeal by filing a timely brief. When a request for oral argument is granted, the Board will give notice of such argument.

(c) *Issues on appeal.* The provisions of § 821.49 shall apply to issues on appeal. However, the Board may upon its own initiative raise any issue, the resolution of which it deems important to a proper disposition of the proceeding. If necessary or appropriate, the parties shall be afforded a reasonable opportunity to comment.

(d) *Petitions for reconsideration, rehearing, reargument, or modification of order.* The only petitions for reconsideration, rehearing, reargument,

or modification of an order which the Board will entertain are petitions based on the ground that new matter has been discovered. Such petitions must set forth the following:

(1) The new matter;

(2) Affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and

(3) A statement that such new matter could not have been discovered by the exercise of due diligence prior to the date the case was submitted to the Board.

§ 821.64 [Amended]

11. Amend paragraph (a) of § 821.64 by removing the words ''section 1006 of the Act (49 U.S.C. 46110) and section 304(d) of the Independent Safety Board Act of 1974 (49 U.S.C. 1153)'' and inserting in their place the words ''49 U.S.C. 1153 and 46110.''

Dated: July 5, 2000.

Jim Hall,

Chairman.

[FR Doc. 00–17417 Filed 7–10–00; 8:45 am]

BILLING CODE 7533–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 070600A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), *July 6, 2000, through 2400 hrs, A.l.t., December 31, 2000.*

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780, fax 907–481–1781 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC of Pacific ocean perch for the Western Regulatory Area was established as 1,240 metric tons (mt) in the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 TAC for Pacific ocean perch in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,140 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Pacific ocean perch for the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 6, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–17473 Filed 7–6–00; 3:09 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 133
Tuesday, July 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV00–905–4 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (Committee). This rule would limit the volume of size 48 and size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 2000–2001 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for the 11-week period. This proposal would supply enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

DATES: Comments must be received by August 10, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administrative Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administrative Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698 or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3 5/16 inches in diameter).

This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market. This rule would limit the volume of size 48 and size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 2000–2001 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for each week of the 11-week period. This proposal would supply enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and

approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11-week period beginning September 18. This rule would limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by establishing a weekly percentage of 25 percent for each of the 11 weeks. This would allow the Committee to start the season at the most restrictive level allowed under § 905.153, and if conditions warrant, to release greater quantities of sizes 48 and 56 small red grapefruit as more information becomes available. The Committee recommended this action by a unanimous vote at a meeting on May 26, 2000. This action is similar to those taken the previous three seasons (1997–98, 1998–99 and 1999–2000.)

For the seasons 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (4/5 bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to $1.41 per carton during the 1996–97 season.

The Committee determined that one problem contributing to the market's condition was the excessive number of small-sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11-week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasted with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season.

While there is a market for early grapefruit, shipping large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes. For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early to get fruit into the market to take advantage of high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower-priced fruit on the market, driving down the price for all sizes.

At the start of the season, larger-sized fruit command a premium price. In some cases, the f.o.b. price is $4 to $10 more a carton than for the smaller sizes. In October, the f.o.b. price for a size 27 averages around $14.00 per carton. This compares to an average f.o.b. price of $6.00 per carton for size 56. In the three years before the issuance of a percentage size regulation, by the end of the 11-week period covered in this rule, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton to an average f.o.b. price of $5.50 per carton during the period covered by this rule. Later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment. However, the price structure in the market had already been negatively affected. The market never recovered, and the f.o.b. price for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes that the over shipment of smaller sized red seedless grapefruit early in the season contributes to poor returns for growers and lower on-tree values. To address this issue, the Committee voted to utilize the provisions of § 905.153, and established a weekly percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, and 1999–2000 seasons. The initial recommendation from the Committee was to set the weekly percentages at 25 percent for each of the 11 weeks. Then, as more information on the crop became available, and as the season progressed, the Committee met again and adjusted its recommendations for the weekly percentages as needed. Actual weekly percentages established during the 11-week period during the 1999–2000 season were 45 percent for the first two weeks, 40 percent for the third week, 37 percent for the fourth through the seventh week, and 32 percent for the last four weeks. The Committee considered information from past seasons, crop estimates, fruit size, and other available information in making its recommendations.

The Committee has used the percentage size regulation to the betterment of the industry. Prices have increased, and movement has been stable. In each of the three seasons following the 1996–97 season, the Committee has recommended utilizing the percentage size rule. During the 11-week period of regulation, the average price has been higher than for the three years prior to regulation. In late October, the average price for red seedless grapefruit was $9.31 for the last three years regulation compared to $7.22 for the same period for the three years prior to regulation. Prices also remained at a higher level, with an average price of $7.31 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons averaging $7.13 compared to $5.83 for the three prior years.

The on-tree earnings per box have also been increasing for the past three years, providing better returns to growers. The on-tree price increased from $3.42 for 1997–98, to $5.04 for 1998–99, to an estimated $6.46 for the 1999–2000 season.

Another benefit of percentage size regulation has been in maintaining higher prices for the larger-sized fruit. Larger fruit commands a premium price early in the season. The f.o.b. price for a larger size can be $4 to $10 more per carton than for smaller sizes. However, the glut of smaller, lower-priced fruit on the early market was driving down the prices for all sizes. In the three years prior to the implementation of the percentage size rule, by the end of the 11-week period covered, the f.o.b. price for the large sizes would drop to within $2 of the f.o.b. price for the smaller sizes. This was not acceptable to the industry.

During the past three years of regulation under the percentage size rule, the average differential between the carton price for a size 27 and the price for a size 56 was $5.65 at the end of October and remained at $3.43 in mid-December. During the three years prior to regulation, the average differential between these two sizes was $3.47 at the end of October, but by mid-December the price for the larger size had dropped to within $1.68 of the price for the smaller-size fruit. In fact, the average prices for each size were higher during the three years with regulation than for the three years prior to regulation. The average prices for size 27, size 32, size 36, and size 40 during the 11-week period for the last three years were $9.07, $7.91, $7.16, and $6.62, respectively. This compares to the average prices for the same sizes during the same period for the three years prior to regulation of $6.48, $5.63, $5.59, and $5.34, respectively.

The percentage size regulation has also been helpful in stabilizing the volume of small sizes entering the fresh market early in the season. During the three years prior to regulation, small sizes accounted for over 34 percent of the total shipments of red seedless grapefruit during the 11-week period covered in the rule. This compares to 31 percent for the same period for the last three years of regulation. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the 11-week regulatory period from 1995–96 to 1999–2000.

In making its recommendation for the upcoming season, the Committee reviewed its experiences from the past seasons. The Committee examined shipment data covering the 11-week regulatory period for the last three regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. The Committee believes establishing weekly percentages during the last three seasons was successful. The past regulations helped maintain prices at a higher level than the previous years without regulation, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

The Committee considered the past problems and the success of the percentage rule and decided to recommend using the percentage of size provisions for the coming season beginning in September. Members believe the problems associated with an uncontrolled volume of small sizes entering the market early in the season would recur without this action. The Committee recommended that the weekly percentage be set at 25 percent for each week of the 11-week period. This is as restrictive as § 905.153 will allow.

The Committee believes it is best to set regulation at the most restrictive level, and then relax the percentages if warranted by conditions later in the season. The Committee intends to meet on a regular basis early in the season, as was done in the previous three seasons. In making this recommendation, the Committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the most current information available to consider adjustments in the weekly percentage rates. This would help the industry and the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages proposed by this rule would require additional rulemaking and the approval of the Secretary.

The Committee noted that more information helpful in determining the appropriate weekly percentages would be available after August. At the time of the May meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October. In addition, the production area is suffering through a period of insufficient rainfall. While the actual effects are not currently known, it is possible that this may affect the sizing of the crop as well as maturity. This could mean a larger volume of small-sized red seedless grapefruit, further exacerbating the problem with small sizes early in the season.

The situation is also complicated by the ongoing problems affecting the European and Asian markets. In past seasons, these markets have shown a strong demand for the smaller-sized red seedless grapefruit. The reduction in shipments to these areas experienced during the last few years is expected to continue during the upcoming season. This reduction in demand could result in a greater amount of small sizes for remaining markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets.

During deliberations in past seasons, the Committee considered how shipments had affected the market. Based on available statistical information, the Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed that if shipments of small sizes could be maintained at around or below 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

Last season, the weekly shipments of sizes 48 and 56 during the 11 weeks regulated remained close to the 250,000 carton mark. This may have contributed to the success of the regulation.

In setting the weekly percentage for each week at 25 percent for this season, the total available allotment would be slightly less than the 250,000 carton level. The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 220,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This would allow total shipments of small red seedless grapefruit to approach the 250,000-carton mark during regulated weeks without exceeding it.

Therefore, this rule would establish the weekly percentage at 25 percent for each of the 11 weeks. The Committee plans to meet in August and as needed during the remainder of the 11-week period to ensure that the set weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 25 percent. By taking the weekly percentage times the average weekly

volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

The Committee would calculate an average week for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks to derive the average week. This average week would be the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 25 percent, is multiplied by a handler's average week. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week.

Under the proposed rule handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. The Committee staff would perform the specified calculations and provide them to each handler.

The average week for handlers with less than five previous seasons of shipments would be calculated by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, a new handler could ship small sizes equal to 25 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week would be calculated as an average of the weeks they have shipped during the current season.

The regulatory period begins the third Monday in September, September 18, 2000. Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week.

The rules and regulations governing percentage size regulation contain a variety of provisions designed to provide handlers with some marketing flexibility. When the Secretary establishes regulation for a given week, the Committee calculates the quantity of small red seedless grapefruit that may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These tolerances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

During any week for which the Secretary has fixed the percentage of sizes 48 and 56 red seedless grapefruit, any handler could handle an amount of sizes 48 or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped would not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party would, prior to the completion of the loan agreement, notify the Committee of the proposed loan and date of repayment. If a transfer of allotment were desired, each party would promptly notify the Committee so that proper adjustments of the records could be made. In each case, the Committee would confirm in writing all such transactions prior to the following week.

The Committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handler's party to the loan. The Committee would notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

The introductory text of § 905.350 is proposed to be modified to reflect the Committee recommendation to establish the minimum size for red seedless grapefruit at size 56 on a continuous basis. A proposed rule to implement this recommendation will be published in a separate issue of the **Federal Register**.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1999–2000 season was around $7.52 per 4/5 bushel carton, and total fresh shipments for the 1999–2000 season are estimated at 25.6 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 70 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the

majority of Florida grapefruit handlers may be classified as small entities. Florida grapefruit producers also may be classified as small entities.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of the 2000–01 season, beginning the third Monday in September. The over shipment of smaller-sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. This proposal would limit the volume of sizes 48 and 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 25 percent. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week would be calculated using the recommended percentage. This rule would utilize the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order.

While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 11-week period for the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments. Also, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the overshipment is deducted from the following week's shipments. Approximately 120 loans and transfers were utilized last season. Statistics for 1999–2000 show that in none of the regulated weeks was the total available allotment used. Therefore, the overall impact of this regulation on total shipments should be minimal.

Handlers and producers have received higher returns under percentage size regulation. In late October, during the last three years with regulation, the average price for red seedless grapefruit was $9.31 compared to $7.22 for the same time during the three years prior to regulation. Prices have also remained higher, with an average price of $7.31 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons with regulation averaging $7.13 compared to $5.83 for the three years prior.

The on-tree earnings per box have also increased for the past three years, providing better returns to growers. The on-tree price increased from $3.42 for 1997–98, to $5.04 for 1998–99, to an estimated $6.46 for the 1999–2000 season. These increased returns when coupled with the overall volume of red seedless grapefruit would offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. This proposal would provide a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation.

The Committee considered alternatives to taking this action. One alternative was to not recommend using the percentage size rule. However, the Committee believes that the problems created by excessive volumes of small sizes entering the market early in the season would return absent the establishment of a percentage size regulation. Therefore, this option was rejected. Another alternative considered was to establish the weekly percentages at levels different than 25 percent. The Committee believes that the pattern of setting the weekly percentages at their most restrictive level, 25 percent, and then revisiting them prior to the beginning of the season has been very successful. Therefore, the Committee rejected this option, choosing instead to reconsider the recommended percentages closer to the beginning of the season.

Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the Committee. The rule would increase the reporting burden on approximately 75 handlers of red seedless grapefruit who would be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping grapefruit in September. In addition, because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time, and the Committee has kept the industry well informed. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. This action is similar to those taken in the previous three seasons, and it was unanimously recommended by the Committee. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/18/00 through 9/24/00	25
(b) 9/25/00 through 10/1/00	25
(c) 10/2/00 through 10/8/00	25
(d) 10/9/00 through 10/15/00 ..	25
(e) 10/16/00 through 10/22/00	25
(f) 10/23/00 through 10/29/00	25
(g) 10/30/00 through 11/5/00 ..	25
(h) 11/6/00 through 11/12/00 ..	25
(i) 11/13/00 through 11/19/00	25
(j) 11/20/00 through 11/26/00	25
(k) 11/27/00 through 12/3/00 ..	25

Dated: July 5, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–17424 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG54

List of Approved Spent Fuel Storage Casks: FuelSolutions™ Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the FuelSolutions™ cask system to the list of approved spent fuel storage casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in the FuelSolutions™ cask system under a general license.

DATES: The comment period expires September 25, 2000. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the capability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the interactive rulemaking website.

Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Milstein, telephone (301) 415–8149, e-mail, rim@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of establishing one or more technologies the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing on July 18, 1990 (55 FR 29181), a final rule in 10 CFR Part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites.'' This rule also established a new Subpart L within 10 CFR Part 72 entitled, ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This proposed rule would add the FuelSolutions™ cask system to the list of NRC-approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Westinghouse (subsequently acquired by BNFL Fuel Solutions (BFS)) submitted an application for NRC approval with the Safety Analysis Report (SAR): ''Final Safety Analysis Report for the WESFLEX Spent Fuel Management System.'' BFS subsequently changed the name of the cask system from WESFLEX to FuelSolutions™. The NRC evaluated the BFS submittal and issued a preliminary Safety Evaluation Report (SER) on the BFS SAR and a proposed Certificate of Compliance (CoC) for the FuelSolutions™ cask system.

The NRC is proposing to approve the FuelSolutions™ cask system for storage of spent fuel under the conditions specified in the proposed CoC. This cask system, when used in accordance with the conditions specified in the CoC and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health

and safety would be ensured. This cask system is being proposed for listing under 10 CFR 72.214, ''List of approved spent fuel storage casks'' to allow holders of power reactor operating licenses to store spent fuel in this cask system under a general license. The CoC would terminate 20 years after the effective date of the final rule listing this cask in 10 CFR 72.214, unless the cask system's CoC is renewed. The certificate contains conditions for use specific for this cask system, addressing issues such as operating procedures, training, and spent fuel specification.

The proposed CoC for the FuelSolutions™ cask system and the underlying preliminary SER, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. Single copies of the proposed CoC and preliminary SER may be obtained from Richard Milstein, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8149, email rim@nrc.gov.

Discussion of Proposed Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate Number 1026 would be added indicating that:

(1) The title of the SAR submitted by BFS is ''Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System;''

(2) The Docket Number is 72–1026;

(3) The certificate expiration date would be 20 years after final rule effective date; and

(4) The model numbers affected are the WSNF–200, WSNF–201, and WSNF–203 systems; the W–150 storage cask; the W–100 transfer cask; and the W–21 and W–74 canisters.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not have significant environmental impacts. The proposed rule would add the FuelSolutions™ cask system to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Richard Milstein, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–8149, email rim@nrc.gov.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

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

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would add the FuelSolutions™ cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use NRC-certified casks to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be added to the listing in 10 CFR 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR Part 72, Subpart L. Subsequently, additional casks have been added to the listing in 10 CFR 72.214.

The alternative to this proposed action is not to certify these new designs and give a site-specific license to each utility that proposes to use the casks. This would cost both the NRC and the utilities more time and money because each utility would have to pursue a new site-specific license. Using site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs and would be in conflict with the NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. Also, this alternative discourages competition because it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rule would eliminate the above problems and is consistent with previous NRC actions. Further, the proposed rule will have no adverse effect on public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plant sites in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and the NWPA direction to certify and list approved casks. This proposed rule would have no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and BFS. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

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

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

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

2. In § 72.214, Certificate of Compliance 1026 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1026
SAR Submitted by: BFNL Fuel Solutions
SAR Title: Final Safety Analysis Report for the FuelSolutions™ Spent Fuel Management System
Docket Number: 72–1026
Certificate Expiration Date: [insert 20 years after the effective date of the final rule]
Model Number: WSNF–200, WSNF–201, and WSNF–203 systems; W–150 storage cask; W–100 transfer cask; and the W–21 and W–74 canisters

* * * * *

Dated at Rockville, Maryland, this 19th day of June, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–17464 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 004–0023; FRL–6733–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County Environmental Services Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing a limited approval and a limited disapproval of a revision to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP) concerning particulate matter (PM–10) [1] emissions from open outdoor fires. The intended effect of proposing a limited approval and limited disapproval of a rule is to strengthen the federally approved SIP by incorporating this revision. EPA's final action on this proposal will incorporate the rule into the SIP. While strengthening the SIP, this revision contains deficiencies which the MCESD must address before EPA can grant full approval under section 110(k)(3) of the Clean Air Act (CAA).

We are proposing limited approval of a revision to the MCESD portion of the Arizona (SIP) concerning PM–10 emissions from abrasive blasting.

We are also proposing full approval of a revision to the MCESD portion of the Arizona (SIP) concerning PM–10

[1] There are two separate national ambient air quality standards (NAAQS) for PM–10, an annual standard of 50 μg/m³ and a 24-hour standard of 150 μg/m³.

emissions from nonmetallic mineral mining and processing.

We are following the CAA requirements for actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Any comments must arrive by August 10, 2000.

ADDRESSES: Mail comments to: Andrew Steckel, Chief, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and our technical support documents (TSDs) at our Region IX office from 8 a.m. to 4:30 p.m., Monday through Friday. To see copies of the submitted rule revisions, you may also go to the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, AZ 85012.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415)744–1135.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
MCESD	312	Abrasive Blasting	07/13/88	01/04/90
MCESD	314	Open Outdoor Fires	07/13/88	01/04/90
MCESD	316	Nonmetallic Mineral Mining and Processing	04/21/99	08/04/99

On May 25, 1990, May 25, 1990, and October 18, 1999, respectively, EPA found that these rule submittals meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. The completeness letters may be found in the docket for this rulemaking.

B. Are There Other Versions of These Rules?

There are no previous versions of Rule 312 in the SIP?

We previously approved a version of Rule 314 into the SIP on April 10, 1995 (60 FR 18010), at which time the Phoenix metropolitan area was classified as a moderate nonattainment area for PM–10. The MCESD regulates certain sources of PM–10 in the nonattainment area. However, the approval action was vacated by the Ninth Circuit Court of Appeals in *Ober* v. *EPA,* 84 F.3d 304 (9th Cir. 1996), so action is being taken again on the original submittal. The original submittal of Rule 314 was intended to replace SIP Rules 50 and 51, which will be replaced by finalizing this rulemaking. The Phoenix metropolitan area is now classified as a serious nonattainment area for PM–10 and a more stringent standard applies to Rule 314. 40 CFR 81.303; compare subsections (a) and (b) of section 189 of the CAA.

We approved a version of Rule 316 into the SIP on August 4, 1997 (62 FR 41856).

C. What Is the Purpose of the Submitted Rules?

Rule 312 limits the emission of particulate matter from abrasive blasting operations to 20 percent opacity, except for not more than three minutes in any one hour period. Required control measures are one of the following: Confined blasting, wet abrasive blasting, hydroblasting, or an approved equivalent control.

Rule 314 prohibits open outdoor fires, except for the following exemptions:

- Fires for cooking, warmth for humans, recreation, branding of animals, or the use of orchard heaters for frost protection.
- Fires permitted by the Arizona Department of Environmental Quality for the disposal of dangerous material where there is no safe alternative.

Additional exemptions are permitted subject to the stipulation of the conditions and time of day best for minimizing air pollution and protecting health, safety, and comfort of persons. Other exemptions are permitted subject to certain stipulations of the Control Officer, including size of pile to be burned, hours, and meteorological conditions.

Rule 316 limits the emission of particulate matter from nonmetallic mineral processing plants, asphaltic concrete plants, and concrete plants to values of percent opacity or particulate matter concentration for stacks and to values of percent opacity for various sources of fugitive dust within the plants. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

We evaluated these rules for enforceability and consistency with the CAA as amended in 1990, with 40 CFR part 51, and with EPA's PM–10 policy. Sections 172(c)(1) and 189(a) of the CAA require moderate PM–10 nonattainment areas to implement reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) requires that serious PM–10 nonattainment areas, in addition to meeting the RACM/RACT requirements, implement best available control measures (BACM), including best available control technology (BACT). The Phoenix metropolitan area is a serious PM–10 nonattainment area. The

MCESD regulates certain sources of PM–10 in the nonattainment area.

EPA's preliminary guidance for both moderate and serious PM–10 nonattainment areas provides that RACM/RACT and BACM/BACT are required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS (*i.e., de minimis* sources). See *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992) and *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998, 42011 (August 16, 1994). PM–10 emissions from the source categories that are the subject of these proposed actions do not meet the significance test above according to the December 1999 *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area* (PM–10 Plan).[2] Therefore, Rules 312, 314, and 316 are not required to meet BACM/BACT control levels.

However, the State submitted Rules 314 and 316 as RACM/RACT rules on which the PM–10 Plan relies. Thus EPA is evaluating Rules 314 and 316 to determine if they meet RACM/RACT requirements, to ensure that they do not relax the SIP in violation of CAA sections 110(l) and 193, and that they meet enforceability and other general SIP requirements of section 110.

In contrast to Rules 314 and 316, MCESD does not identify Rule 312, abrasive blasting, in PM–10 Plan as a RACM/RACT rule. Therefore, we are evaluating Rule 312 only to ensure that it does not relax the SIP in violation of CAA sections 110(l) and 193, and that it meets enforceability and other general SIP requirements of section 110. Rule 312 strengthens the SIP by regulating a previously non-regulated source of PM–10 emissions, so SIP relaxation is not at issue. The TSDs have more information on how we evaluated the rules.

Guidance and policy documents that we used to define specific enforceability, SIP relaxaton, and RACM/RACT requirements include the following:

- *PM–10 Guideline Document,* (EPA–452/R093–008).
- *Procedures for Identifying Reasonably Available Control Technology for Stationary Sources of PM–10* (EPA–452/R–93–001).
- *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area* (December 1999).
- *General Preamble Appendix C3—Prescribed Burning Control Measures,* 57 FR 18072 (April 28, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998 (August 16, 1994).

B. Do Any of the Rules Fully Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying recordkeeping provisions. These rules are largely consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and RACT requirements. Rule provisions which do not fully meet the evaluation criteria are summarized below and discussed further in the TSDs.

MCESD Rule 316 has standards for nonmetallic mineral mining and processing plants generally as stringent or more stringent than NSPS (40 CFR 60.672) and analogous rules in other states. The rule is more stringent than the SIP rule. We have determined that MCESD Rule 316 meets the requirements of RACT and other applicable requirements of the CAA. As a result, we have determined that MCESD Rule 316 should be given full approval.

C. What Are the Rule Deficiencies?

- Rule 312 has a provision that prevents full approval of the SIP revision:

- The rule enforceability is limited due to the discretion of the Control Officer in paragraph 302.4 to approve alternate control methods.

Rule 314 has provisions that prevent full approval of the SIP revision:

- The exemption to burn dangerous materials in paragraph 302.2 limits enforceability, because the dangerous materials are not defined.
- Exemptions permitting open burning with the stipulation of conditions and time of day in paragraph 302.3 limit enforceability, because the conditions for allowing exemptions are not specified and are at the discretion of the Control Officer. In order to meet the requirements of RACM and to be enforceable, the Control Officer should use conditions based on quantitative data, such as reasonably available meteorological data, to predict which days are favorable for open burning and smoke dispersion.
- The exemption to burn with an air curtain destructor in paragraph 302.5 limits enforceability, because the Control Officer has discretion to approve the material to be burned and type and size of equipment without any guidelines.

D. EPA Recommendations to Further Improve the Rules

The TSD for Rule 316 describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing a limited approval of the submitted Rules 312 and 314 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. We are also simultaneously proposing a limited disapproval of Rule 314 under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the MCESD, and EPA's final limited disapproval would not prevent the local agency from enforcing Rule 314. Sanctions would not be imposed for Rule 312.

As authorized in section 110(k) of the Act, EPA is proposing a full approval of the submitted Rule 316 to improve the SIP.

We will accept comments from the public on the proposed limited approval and limited disapproval, the proposed limited approval, and the proposed full approval for the next 30 days.

III. Background Information

Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency PM–10 rules.

[2] On April 13, 2000, EPA proposed approval of this plan. See 65 FR 19963. If the PM–10 Plan should be modified in the future, EPA could require additional control measures to meet BACM/BACT requirements.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
03/03/78	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act). 43 FR 8964; 40 CFR 81.305.
07/01/87	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). (52 FR 24672).
11/15/90	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
11/15/90	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 189(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. 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.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP actions under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility

analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on 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.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2000.

Nora McGee,

Acting Regional Administrator, Region IX.

[FR Doc. 00–17492 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6729–5]

RIN 2060–AG12

Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to impose restrictions or prohibitions on substitutes for ozone-depleting substances (ODSs) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the Clean Air Act, as amended in 1990, which requires EPA to evaluate substitutes for ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone-depleting compounds while avoiding a shift into substitutes posing other environmental problems.

DATES: Written comments or data provided in response to this document must be submitted by September 11, 2000. A public hearing will be held if requested in writing. If a public hearing is requested, EPA will provide notice of the date, time and location of the hearing in a subsequent **Federal Register** document.

ADDRESSES: Written comments and data should be sent to Docket A–2000–18, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, SW, Room M–1500, Mail Code 6102, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Anhar Karimjee at the address listed below under **FOR FURTHER INFORMATION.** Information designated as Confidential Business Information (CBI) under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Anhar Karimjee at phone: (202) 564–2683, fax: (202) 565–2095 or e-mail: karimjee.anhar@epa.gov, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW, Washington, DC, 20001. The Stratospheric Protection Hotline can be reached at (800) 296–1996 and additional information can be found at EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/''.

SUPPLEMENTARY INFORMATION: On March 18, 1994, EPA promulgated a rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and has since issued decisions on the acceptability and unacceptability of a number of substitutes. Today's proposal presents EPA's response to a SNAP submission received in February 1999, requesting review of the following foam blowing agents as substitutes for HCFC–141b: HFC–134a; HCFC–22; HCFC–142b; HCFC–124; and a HCFC–22/142b blend. This proposal also addresses use of HCFC–22 and HCFC–142b as foam blowing agents. In this Notice of Proposed Rulemaking, EPA is proposing the following decisions on the acceptability of substitutes in the foams sector:

To list HCFC–141b and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–141b use would be grandfathered (*i.e.,* allowed to continue) until January 1, 2005. To list HCFC–22, HCFC–142b, and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–22/–142b use would be grandfathered until January 1, 2005.

To list HCFC–124 as unacceptable as a substitute in all foam end-uses. EPA is not proposing to grandfather the use of HCFC–124 because it has not been previously listed as an acceptable foam blowing agent. No further action is proposed on the SNAP submission request for review of HFC–134a. EPA previously listed HFC–134a as an acceptable substitute for HCFC 141b (64 FR 63558).

Outline

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A. Significant New Alternatives Policy (SNAP) Program
B. SNAP Submissions and Listing Decisions
C. Hydrochlorofluorocarbon (HCFC) Phase-out
D. HCFC–141b Phase-out
E. Significant New Alternatives Policy (SNAP) Foams Sector
F. Submission Addressed in Today's Proposal
II. Proposed Significant New Alternatives Policy (SNAP) Listing Decisions
III. Q's and A's on Today's Proposed Listing Decisions
IV. Economic Impact
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I. Background

A. Significant New Alternatives Policy (SNAP) Program

On March 18, 1994, EPA published a rulemaking (59 FR 13044) that described the process for administering the SNAP program and issued EPA's first lists of acceptable and unacceptable substitutes for end-uses that historically had been dominated by ozone-depleting substances (ODSs). The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance (40 CFR 82.172). EPA's SNAP regulations define ''use'' as any use of a substitute for a class I or class II ozone-depleting compound, including but not limited to use in a manufacturing process or product, in consumption by the end-user, or in intermediate uses, such as formulation or packaging for other subsequent uses (40 CFR 82.172). The requirements of the SNAP program include:

• *Rulemaking*—Section 612 of the CAA requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) Reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—EPA must publish a list of the substitutes unacceptable for specific uses and a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Any person has the right to petition EPA to add a substitute or delete a substitute from the lists published under SNAP. The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

• *90-day Notification*—EPA requires any person who produces a new chemical substitute to notify the Agency at least 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

• *Outreach*—EPA must seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—The Agency has set up a public clearinghouse (Docket A–91–42) of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances. For more information on how to contact this clearinghouse, please contact the Air Docket with the information in the **ADDRESSES** section of this document.

SNAP sectors include: Refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings, and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed large volumes of ozone-depleting substances. Anyone who produces a new substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers of substitutes, but may also include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce. Any individual who uses a substitute in end-uses within any of the major industrial sectors listed above is subject to SNAP lists.

For copies of all of the current SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at (800) 296–1996, Monday–Friday, between the hours of 10 a.m. and 4 p.m. (EST). You may also contact the Air Docket and Information Center, 401 M Street, SW, Room M–1500, Mail Code 6102, Washington, DC 20460. The docket, which is the administrative record for EPA's SNAP regulations, may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). This, and subsequent notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/'' and from the Stratospheric Protection Hotline number listed above.

B. SNAP Submissions and Listing Decisions

The SNAP program receives submissions requesting EPA to review alternatives to CFCs and HCFCs for use in various applications. The 90-day review period begins when EPA receives a submission and determines that it includes all of the necessary information. As outlined in 40 CFR 82.180(a)(7), EPA considers the following factors when reviewing a submission:

(1) Atmospheric effects and related health and environmental impacts;
(2) General population risks from ambient exposure to compounds with direct toxicity and to increased ground level ozone;
(3) Ecosystem risks;
(4) Occupational risks;
(5) Consumer risks;
(6) Flammability; and
(7) Cost and availability of the substitute.

At the conclusion of the 90-day period, EPA makes a determination on the acceptability of the alternative. Under Section 612 of the CAA, the Agency has considerable discretion in the risk management decisions it can make in SNAP. In the SNAP rule, the Agency identified the following possible decision categories (40 CFR 82.180(b); see also 59 FR 13062 Decision-Making Framework):

1. Acceptable: Fully acceptable substitutes, *i.e.,* those with no restrictions, can be used for all applications within the relevant sector end-use;

2. Unacceptable: It is illegal to replace an ozone depleting substance with a substitute within an end-use for which the substitute is listed by SNAP as unacceptable;

3. Acceptable subject to use conditions: To minimize risk to human

health and/or the environment, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met. Use of such substitutes without meeting specified use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the CAA;

4. Acceptable subject to narrowed use limits: Applied when the Agency determines a need to restrict the use of a substitute based on the potential for adverse effects, while permitting a narrowed range of use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute that is acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives (*e.g.,* performance, technical or safety standards), and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes without meeting specific narrowed use limits subjects the user to enforcement for violation of section 612 of the CAA;

5. Pending: Used for substitutes for which the Agency has not received complete data or has not completed its review of the data.

As described in the final rule for the SNAP program, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes (50 FR 13044, 13047). EPA does not believe that notice-and-comment rulemaking procedures are required to list alternatives as acceptable with no restrictions. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable lists are published as separate Notices of Acceptability in the **Federal Register**.

If EPA does not make a decision within 90 days of receipt of a complete submission, the substitute(s) can be legally used in the end-use for which they were submitted. EPA can subsequently list the substitute(s) as unacceptable making them illegal for use in specific end-uses. If EPA ultimately determines that the substitute is unacceptable, any company that switched to the alternative after the 90-day period expired must stop using that alternative at the time EPA's unacceptability decision takes effect.

C. Hydrochlorofluorocarbon (HCFC) Phase-Out

The Montreal Protocol on Substances that Deplete the Ozone Layer (''the Montreal Protocol'' or ''the Protocol'') is an international treaty established in 1987 which aims to reduce the harmful effects of man-made ozone-depleting substances. The Protocol has been signed by more than 160 countries, all of whom have agreed to limit or eliminate their production and/or consumption of ozone-depleting substances in a stepwise fashion over time, according to the terms of the treaty and its amendments. The U.S. has adopted the Montreal Protocol and must at a minimum comply with its phase-out schedules and other requirements.

During their second meeting in London in 1990, the countries that are Parties to the Montreal Protocol identified HCFCs as transitional substitutes for chlorofluorocarbons (CFCs) and other more destructive ozone-depleting substances, but agreed to phase out HCFCs because of their significant potential to destroy stratospheric ozone as well. Recognizing the impact this phase-out would have on manufacturers and users of HCFCs, the Protocol provides for a gradual reduction in the consumption of HCFCs and eventual phase-out in developed countries by 2030. (A more extended schedule was agreed upon for developing countries, with a complete HCFC consumption phase-out by 2040.) Beginning in 1996, production of HCFCs in developed countries was capped at the 1989 HCFC production level, plus 2.8% of the 1989 CFC production level. Using the cap as a baseline, the U.S. consumption of HCFCs must be reduced by the following amounts and dates:

– 35% by 2004
– 65% by 2010
– 90% by 2015
– 99.5% by 2020
– 100% by 2030

The phase-out of HCFCs in the U.S. is implemented through regulations published under the authority of the Clean Air Act (CAA) (40 CFR 82 Subpart A). The CAA, as amended in 1990, established a U.S. consumption phase-out schedule for HCFCs and required EPA to promulgate regulations to implement, and if necessary, accelerate the phase-out to conform to the Montreal Protocol requirements. The phase-out schedule for HCFCs, established in rulemaking promulgated on December 16, 1993, is on a chemical-by-chemical basis, beginning with those with the highest ozone depletion potential (ODP), as outlined below. [**Note:** Consumption means the amount of a substance produced in the U.S., plus the amount imported, minus the amount exported (CAA, Title VI, § 601)].

(1) In light of the 35% reduction in HCFC consumption required by the Montreal Protocol by 2004, production and import of HCFC–141b will be banned in the U.S. as of January 1, 2003. Under the U.S. consumption phase-out schedule, HCFC–141b is being phased out first because it has the highest ODP of any commonly used HCFC. Petitions received from a number of environmental organizations and industry groups prior to the EPA's December 10, 1993 rulemaking (58 FR 65018) supported the decision to make ODP the key factor in establishing this phase-out schedule. In addition, the formula established by the Montreal Protocol to determine the cap on HCFC consumption weights HCFCs according to their ODP. Phasing out the HCFCs with the highest ODPs yields the greatest environmental benefit, while helping the U.S. meet the phase-out schedule and still allowing the use of other HCFCs in areas where suitable ozone-safe alternatives are not yet available.

(2) Effective January 1, 2010, in light of the 65% reduction in HCFC consumption required by the Montreal Protocol that year, production and import of HCFC–142b and HCFC–22 will be prohibited, except for use in equipment manufactured prior to January 1, 2010. HCFC–142b and HCFC–22 are being phased out before other HCFCs because they have high ODPs relative to other HCFCs (other than HCFC–141b). Together with HCFC–141b, these are the HCFCs that cause the most damage to the stratospheric ozone layer.

(3) Beginning in 2015, in light of the 90% reduction in HCFC consumption required by the Montreal Protocol that year, production and import of the remaining HCFCs will be prohibited beginning January 1, 2015, except for feedstocks or for use as a refrigerant in equipment manufactured before January 1, 2020.

(4) Beginning in 2020, in light of the 99.5% reduction in HCFC consumption required by the Montreal Protocol that year, the exemption for use of HCFC–

142b and HCFC–22 in equipment produced prior to 2010 will end, and all production and consumption of these two HCFCs will be phased out.

(5) All HCFCs will be completely phased out by January 1, 2030. The Montreal Protocol and CAA allow limited production of HCFCs after the January 1, 2030 phase-out for export to developing countries to meet their basic domestic needs.

In addition to a cap on HCFC consumption, the Parties to the Montreal Protocol agreed at their 1999 meeting in Beijing, China to require a cap on HCFC production. According to the formula established in the Beijing amendment to the Protocol, the annual cap on production in the U.S. will be the average of: the sum of 2.8% of our 1989 CFC consumption plus 100% of our 1989 HCFC *consumption,* and the sum of 2.8% of our 1989 CFC production plus 100% of our 1989 HCFC *production.* According to this formula, annual production of HCFCs in the U.S. will be capped at 15,537 metric tons beginning in 2004. Pursuant to Section 614 (b) of the CAA, on April 5, 1999, EPA published an Advance Notice of Proposed Rulemaking (64 FR 16373) regarding a proposed system of transferable allowances to produce and consume HCFCs. This system would supplement the chemical-specific phase-out and ensure that the U.S. does not exceed its consumption cap.

D. HCFC–141b Phase-Out

As noted above, production and import of HCFC–141b will be banned in the U.S. as of January 1, 2003. The phase-out related restrictions on HCFC–141b in the U.S. focus on consumption and do not include use. The Montreal Protocol does not restrict the use of HCFCs. Section 605 of the CAA does contain use restrictions on HCFCs, but they are not effective until 2015. Therefore, neither the international nor domestic phase-out requirements would limit the use of HCFC–141b stockpiles between 2003 and 2015. Both manufacturers and users can stockpile for future use, to the extent use will be permitted under the CAA and its implementing regulations. It is important to note, however, that EPA previously determined that HCFC–141b is not acceptable as a substitute cleaning solvent for CFC–113 or methyl chloroform. These determinations were based on the availability of zero-ODP alternatives in these applications. In today's action, EPA is proposing that the use of HCFC–141b as a foam blowing agent in any end-use would be illegal after January 1, 2005. See below for current information on HCFC–141b and the limits or conditions on its use.

As stated above, the HCFC–141b phase-out refers to consumption of HCFC–141b only. The phase-out does not affect imports of products containing HCFC–141b. Under Section 610 of the CAA, EPA has the authority to prevent interstate sale and distribution of certain products containing or manufactured with ozone-depleting substances. However, insulating foams, as defined in 40 CFR 82 subpart C, are specifically exempt from regulation under Section 610. Title VI of the Act thus does not provide EPA with the authority to prevent imports of products containing these foams.

E. Significant New Alternatives Policy (SNAP) Foams Sector

Class I substances, such as chlorofluorocarbon (CFC) –11, –12, –113, –114 and methyl chloroform, were the substances most widely used in foam sector end-uses at the time of the CAA Amendments of 1990 and EPA's original SNAP rule in March 1994. CFC–11 and –113, liquids at room temperature, were historically used in polyurethane and phenolic foams. CFC–12 and –114, gases at room temperature, were historically used in polyolefin and polystyrene foams. Methyl chloroform was used in some flexible polyurethane foams.

A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances. To encourage this transition, EPA has taken a stepwise approach to approving CFC and HCFC substitutes. In the original SNAP ruling, EPA created a list of acceptable substitutes for CFCs, which were common foam blowing agents at that time. The list of acceptable substitutes for CFCs includes: Hydrochlorofluorocarbon (HCFC) –123, –141b,—142b, –22; formic acid; saturated light hydrocarbons C3–C6; hydrofluorocarbon (HFC) –134a,—152a, –143a; 2–chloropropane; Electroset Technology; carbon dioxide; vacuum panels; methylene chloride; acetone; AB Technology; and various blends.

EPA listed HCFCs as acceptable replacements for CFCs because the Agency felt that HCFCs provided a bridge to ozone-friendly alternatives. Since then, HCFC–141b, –22 and –142b have become the most common foam blowing agents and consequently, the Agency has identified several new alternatives as substitutes for HCFCs in a second list. SNAP acceptable alternatives to HCFCs include: water; carbon dioxide; HFC–134a, –152a, –245fa; saturated light hydrocarbons C3–C6; formic acid; and acetone. All of these alternatives have no ozone depleting potential and are available and several companies are using them or plan to use them in the near future (before 2003) in various end-uses such as polyurethane boardstock and appliance foam.

Because CFCs are no longer used as foam blowing agents in the U.S., EPA plans to evaluate the current list of acceptable substitutes for CFC foam blowing agents to determine if there are alternatives on that list that are also acceptable HCFC substitutes. This re-evaluation would eventually result in one list of acceptable substitutes in the foam sector which all users would be subject to. EPA believes that a unified list would minimize confusion and economic disparities among regulated entities. Current users may switch from one acceptable substitute to another without notifying EPA. If, however, a user would like to use something that is not currently listed to replace an ODS, even if this new substance is a non-ODS, the manufacturer must notify EPA. This allows EPA to evaluate the risks of new substitutes and assists in our responsibility to maintain a clearinghouse of current information on environmentally superior alternatives to ozone-depleting compounds.

Lists of the substitutes along with their approval dates and **Federal Register** citations can be obtained through the Air Docket (A–2000–18). EPA has placed a complete list of acceptable alternatives for specific end-uses in the foams sector on the internet at http://www.epa.gov/ozone/title6/snap.

F. Submission Addressed in Today's Proposal

The submission addressed in today's proposal was sent to EPA on February 17, 1999 and requests review of the following foam blowing agents as substitutes for HCFC–141b: (1) HFC–134a; (2) HCFC–22; (3) HCFC–142b; (4) HCFC–124; and (5) a HCFC–22/142b blend. HFC–134a was approved as a substitute for HCFC–141b in a **Federal Register** Notice published on June 8, 1999 (64 FR 63558). Therefore, HFC–134a is not discussed in this proposal. The Agency is also proposing SNAP listing decisions for HCFC–141b, –22, and –142b as foam blowing agents. These decisions are based on the availability of zero-ODP alternatives. EPA believes that including them in this proposal would effect a balanced and smooth transition across the entire insulating foams sector. EPA previously reviewed all of the chemicals in the submission, either as CFC substitutes in the foam sector or in other SNAP

sectors. Therefore, the submitter was not required to re-submit information on these chemicals. Instead, they sent a letter to EPA outlining their request along with a Material Safety Data Sheet for a 142b/22 blend and a technical data sheet discussing flammability of the blend. The submission provided EPA with sufficient information to consider the request. You can obtain a copy of the submission (A–2000–18) from EPA's Air Docket located at 401 M Street, SW, Room M–1500, Washington, DC 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. A reasonable fee may be charged for photocopying.

II. Proposed Significant New Alternatives Policy (SNAP) Listing Decisions

A. Unacceptable Substitutes

(1) HCFC–141b and Blends Thereof

HCFC–141b and blends thereof are proposed as unacceptable as substitutes in all foam end-uses. This listing would be effective 30 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users would be grandfathered (*i.e.,* allowed to continue their use) until January 1, 2005. In this context, existing users are those using HCFC–141b in foam applications on the date of publication of a final action in the **Federal Register**. EPA is proposing to grandfather existing uses of HCFC–141b from prohibition under the four-part test established in *Sierra Club* v. *EPA* (719 F.2d 436 (DC Cir. 1983)) and discussed in Section VI.B. of EPA's original SNAP rule (59 FR 13044) published on March 18, 1994. As discussed in Section III, below, the Agency reviewed the considerations outlined in *Sierra Club* v. *EPA* and believes that this grandfathering period is appropriate.

The basis for EPA's proposed determination to list HCFC–141b as unacceptable is that HCFC–141b, with an atmospheric lifetime of approximately 9 years, has a comparatively high ozone depletion potential (ODP) of 0.11. When HCFC–141b was listed as an acceptable substitute for chlorofluorocarbons (CFCs), there were fewer alternatives available than there are today. Since 1994, EPA has listed alternatives as acceptable in more foam end-uses, and they are being used in a greater number of applications. Non-ozone-depleting substitutes are now available for all foam end-uses. The 1998 report of the United Nations Environment Programme (UNEP) Foams Technical Options Committee (TOC) concluded that zero-ODP alternatives are the substitutes of choice in many applications, including certain rigid thermal applications (UNEP, 1998). Also, research and development has improved the technical viability of some alternatives that have been available for years. The 1998 UNEP Foams TOC report presents several zero-ODP foam blowing agents that are viable alternatives and states that ''there are several significant developments in blowing agents, many of which are applicable to more than one foam sector''; for example, the report states that cost and technical performance of hydrocarbons have been improved and that certain hydrofluorocarbons, which are acceptable under SNAP, are ''near drop-in replacements for HCFC–141b'' (UNEP, 1998). The available alternatives, including hydrofluorocarbons, hydrocarbons, and carbon dioxide, provide clear paths to the transition away from ozone-depleting substances.

EPA is not proposing to allow for an extension of the grandfathering period beyond January 1, 2005 in today's action, because the Agency is unaware of any situation where it would be necessary. The Agency also believes that the declining availability of HCFC–141b, due to the HCFC–141b production phaseout effective January 1, 2003, makes it unlikely that users will want to pursue an extension of the grandfathering period. However, EPA is interested in comments on whether such extensions may be appropriate, on a case-by-case basis, for those uses where technically feasible alternatives are not available. In order for EPA to extend the grandfathering period, the Agency would need to be convinced that there are no technically feasible alternatives available.

(2) HCFC–22, –142b and Blends Thereof

HCFC–22, –142b, and blends thereof are proposed as unacceptable as substitutes in all foam end-uses. This listing would be effective 30 days following publication of a final action in the **Federal Register**. However, EPA is proposing that existing users would be grandfathered until January 1, 2005. In this context, existing users are those using HCFC–22, –142b, or blends thereof in foam applications on the date of publication of a final action in the **Federal Register**. As discussed in Section VI.B. of EPA's original SNAP rule (59 FR 13044) published on March 18, 1994, EPA is authorized to grandfather existing uses from prohibition where appropriate under the four-part test established in *Sierra Club* v. *EPA* (719 F.2d 436 (DC Cir. 1983)). As discussed in Section III, below, the Agency reviewed the considerations outlined in *Sierra Club* v. *EPA* and believes that this grandfathering period is appropriate.

EPA believes that there are technically feasible zero-ODP substitutes available to replace HCFC–22 and –142b and it is, therefore, appropriate to list these substitutes as unacceptable. The basis for EPA's proposed determination to list HCFC–22 and –142b as unacceptable is that these substances have comparatively high ODPs (0.055 for HCFC–22 and 0.065 for HCFC–142b). The approximate atmospheric lifetimes of HCFC–22 and –142b are 12 years and 18 years, respectively. When HCFC–22 and –142b were listed as acceptable substitutes for CFCs, there were fewer alternatives available than there are today. Since 1994, EPA has listed alternatives as acceptable in more foam end-uses, and they are being used in a greater number of applications. Non-ozone-depleting substitutes are now available for all foam end-uses. The 1998 report of the United Nations Environment Programme (UNEP) Foams Technical Options Committee (TOC) concluded that zero-ODP alternatives are the substitutes of choice in many applications, including certain rigid thermal applications (UNEP, 1998). Also, research and development has improved the technical viability of some alternatives that have been available for years. The 1998 UNEP Foams TOC report presents several zero-ODP foam blowing agents that are viable alternatives and states that ''there are several significant developments in blowing agents, many of which are applicable to more than one foam sector''; for example, the report states that cost and technical performance of hydrocarbons have been improved and that certain hydrofluorocarbons, which are acceptable under SNAP, are ''near drop-in replacements for HCFC–141b'' (UNEP, 1998). The available alternatives, including hydrofluorocarbons, hydrocarbons, and carbon dioxide, provide clear paths to the transition away from ozone-depleting substances.

EPA is not proposing to allow for an extension of the grandfathering period beyond January 1, 2005 in today's action, because the Agency is unaware of any situation where it would be necessary. However, EPA is seeking comment on whether such extensions may be appropriate, on a case-by-case basis, for those uses where technically feasible alternatives are not available. In order for EPA to extend the

grandfathering period, the Agency would need to be convinced that there are no technically feasible alternatives available.

(3) HCFC–124

HCFC–124 is proposed as unacceptable as a substitute in all foam end-uses. HCFC–124 is a low pressure gas with an ODP of 0.02, an atmospheric lifetime of approximately 6 years, and a 100-year global warming potential of approximately 600. Other alternatives exist with lower or no ODP. These alternatives are identified above in Section I.C.

EPA is not proposing to grandfather the use of HCFC–124 because it has not been previously listed as an acceptable foam blowing agent.

III. Q's and A's on Today's Proposed Listing Decisions

Who Is Affected by Today's Proposal?

This proposal would affect anyone who uses HCFC–141b, HCFC–22, HCFC–142b, or HCFC–124 as a foam blowing agent. Affected parties include, but are not limited to, manufacturers of the following products: polyurethane and polyisocyanurate boardstock, appliance foam, spray foam, and sandwich panels; polystyrene boardstock; phenolic foams; and polyolefin foams.

What Is EPA Proposing?

EPA believes that there are sufficient alternatives with zero ozone depletion potential (ODP) currently or potentially available to make these listings. EPA proposes the following:

(1) To list HCFC–141b and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–141b use would be grandfathered until January 1, 2005.

(2) To list HCFC–22, HCFC–142b, and blends thereof as unacceptable as substitutes in all foam end-uses. Current HCFC–22/–142b use would be grandfathered until January 1, 2005.

(3) To list HCFC–124 as unacceptable as a substitute in all foam end-uses. EPA proposes these listings after reviewing a SNAP submission that requested review of several HCFC foam blowing agents (the submission is discussed below) and conducting a comprehensive evaluation of substitutes for both chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) in the Significant New Alternatives Policy (SNAP) foam sector.

What Did EPA Base This Proposed Decision On?

EPA is basing this proposed listing decision on the potential atmospheric effects, including the ODP and atmospheric lifetimes associated with the various foam blowing substitutes. According to the Scientific Assessment of Ozone Depletion: 1998 (World Meteorological Organization, 1999), HCFC–141b has an ODP of 0.1, HCFC–142 has an ODP of 0.065, HCFC–22 has an ODP of 0.055, and HCFC–124 has an ODP of 0.02. The atmospheric lifetimes for these chemicals range from 6–18 years. Regarding the other health and environmental factors typically included in SNAP review (40 CFR 82.180(a)(7)), EPA finds no substantive distinction between the HCFCs and other available alternatives listed as acceptable foam blowing agents.

Why Is EPA Proposing To List HCFC–141b, –22, –142b, and –124 as Unacceptable?

In 1994, under the SNAP program, EPA approved the use of HCFCs as transitional foam blowing agents, despite their ozone depletion potential, because technically feasible alternatives were limited at that time. Manufacturers of the class I CFC blowing agents had worked in collaboration to develop transitional substances—HCFCs—for the use in all sectors, as a bridge to the time when ozone-safe alternatives would be technically feasible. Since then, previously available zero-ODP alternatives have been tested, developed, and optimized for a broader range of foam applications, and additional zero-ODP alternatives have become available (59 FR 13083). A major objective of the SNAP program is to promote the use of substitutes which present a lower risk to human health and the environment (40 CFR 82.170). EPA believes that sufficient non-ozone-depleting foam blowing agents are available. EPA is proposing to list HCFC–141b, –22, –142b, and –124 as unacceptable because zero-ODP alternatives are available that will reduce the overall risk to public health and the environment.

EPA Listed HCFC–141b as an Acceptable Replacement for CFCs. Why Is EPA Revisiting the Acceptability of HCFC–141b in Today's Proposal?

As stated above, EPA believes that zero-ODP alternatives are available as substitutes for HCFC–141b in all foam end-uses. EPA is addressing the use of HCFC–141b in this proposal in order to maintain a consistent policy on the use of HCFCs in the foam sector and to ensure that the use of HCFC–141b does not continue in applications where zero-ODP alternatives exist. This decision is consistent with a previous EPA determination, based on the availability of alternatives with zero-ODP, that HCFC–141b is *not* acceptable as a substitute cleaning solvent for CFC–113 or methyl chloroform. Because EPA has provided an effective means for HCFC–141b users to transition to zero-ODP alternatives, today's proposal on HCFC–141b would have little or no negative effect on the foam industry.

Why Is EPA Proposing To List HCFC–22, –142b, and –124 as Unacceptable Replacements for HCFC–141b, Even Though Their ODPs Are Lower Compared to HCFC–141b?

EPA has concluded that listing these substances as unacceptable substitutes is consistent with the goals of the SNAP program. A major goal of the SNAP program is to facilitate the transition away from ozone-depleting substances (ODSs) by encouraging the use of environmentally safe alternatives. Congress intended to encourage and support research and development of non-ozone-depleting chemicals to replace HCFCs by giving EPA the authority to review potentially available alternatives (see also Section 612(a), (b), and (c) of the CAA). The use of HCFCs was initially considered acceptable as a bridge to zero-ODP foam blowing agents. Many HCFC–141b users and manufacturers have been researching alternatives for several years and are currently transitioning to zero-ODP foam blowing agents. Today's proposal does not disrupt their transition. Even though HCFC–22, –142b and –124 have lower ODPs compared to HCFC–141b, EPA does not believe that the new use of these ODSs as substitutes for HCFC–141b, even for a short period of time, is necessary in light of available zero-ODP foam blowing agents. Switching from HCFC–141b to HCFC–22, –142b or –124 would result in continued damage to the ozone layer and would delay the transition to zero-ODP foam blowing agents which are available.

Although HCFC–141b, –22 and –142b Are Being Proposed as Unacceptable in Today's Action, EPA is Proposing To Grandfather Existing Users of These Substances Until 2005. What Is Grandfathering?

In the original SNAP rulemaking, EPA recognized that, where appropriate, EPA can grandfather the use of a substitute by setting the effective date of its unacceptability listing for one or more specific parties in the future (59 FR 13057–58). EPA is authorized to allow the continuation of activities otherwise restricted where the balance of equities supports such grandfathering. Setting future effective dates allows the Agency to avoid penalizing those who in

specific applications may have already invested in good faith in alternatives that the SNAP program now determines to be unacceptable. Grandfathering also allows EPA to balance the desire not to penalize those who switched early in good faith with the need to avoid creating an incentive for continued investment in alternatives the Agency wishes to discourage.

What Criteria Are Used in Deciding Whether To Grandfather Continued Use of Unacceptable Substitutes?

In *Sierra Club* v. *EPA* (719 F.2d 436 (DC Cir. 1983)), the court established a four-part test to judge the appropriateness of Agency grandfathering. EPA considers the following when making a grandfathering determination:

(1) if the new rule represents an abrupt departure from previously established practice;

(2) the extent to which a party relied on the previous rule;

(3) the degree of burden which the application of the new rule would impose on the party; and

(4) The statutory interest in applying the new rule immediately.

Why Does EPA Believe That HCFC–141b, –22 and –142b Users Meet the Grandfathering Criteria?

The Agency recognizes that some foam manufacturers may have switched to HCFC–141b, –22 or –142b in good faith, expecting that these substitutes would sufficiently lower the risk of ozone depletion relative to other foam blowing agents available at the time. To avoid unfairly penalizing these existing users, the Agency is proposing to extend the effective date of the unacceptability listing until January 1, 2005, based on EPA's belief that existing users of HCFC–141b, –22 and –142b meet the grandfathering criteria outlined in *Sierra Club* v. *EPA.* EPA listed these substances as acceptable substitutes for class I substances in 1994. Prohibiting the use of these chemicals immediately represents an abrupt departure from that established practice for the many foam manufacturers that rely on HCFC–141b, –22 and –142b. These HCFCs were previously listed as acceptable substitutes for CFC foam blowing agents in various end-uses and were not scheduled for phase-out until future years. Additionally, if the proposal was to become effective immediately, it could create a burden on existing users if they currently do not have the means to make a sudden change to their operations. These factors outweigh EPA's statutory interest in applying the new rule immediately to existing users. EPA believes its goal of encouraging the transition away from ODSs is still satisfied as new use of these substances will not be permitted in the foam sector and existing users will begin transitioning to zero-ODP alternatives.

How Did EPA Determine the Length of the Proposed Grandfathering Period?

EPA believes that it could take foam manufacturers up to four years to transition to alternatives. EPA considered that companies might need to conduct several activities during that time period, including:

(1) Obtain permits or make modifications to existing permits;

(2) Make changes to equipment in order to optimize production and ensure worker safety;

(3) Establish raw material suppliers;

(4) Develop formulations;

(5) Test final products; and

(6) Obtain final product review and approval by relevant boards or agencies.

I Currently Use HCFC–22 and/or HCFC–142b as a Foam Blowing Agent. How Long Could I Continue To Use Them?

In today's action, EPA proposes that all current users of HCFC–22 or –142b in foam applications must transition to an acceptable substitute by January 1, 2005. EPA strongly encourages foam end-users to transition away from these substitutes as their existing stocks are used and/or they recoup their investment in equipment unique to these substitutes.

Why Is EPA Not Proposing To Grandfather the Use of HCFC–124 as Well?

Grandfathering would not apply to HCFC–124 as a foam blowing agent since it has not been previously listed as an acceptable foam blowing agent. Grandfathering allows limited continuation of previously acceptable use which is subsequently determined to be unacceptable.

Why Would I Have To Stop Using HCFC–22 or –142b Before Its Production Phase-Put in 2010?

The production phase-out, which is described in more detail above, does not govern use of HCFCs. As mentioned above, the role of the SNAP program is to promote the use of substitutes believed to present a lower risk to human health and the environment (40 CFR 82.170). EPA believes that sufficient non-ozone-depleting foam blowing agents are available to replace HCFC–22 and –142b. The Agency has listed other ozone-depleting chemicals as unacceptable for specific uses before the production phase-out date specified in the Montreal Protocol and Clean Air Act (*e.g.* HCFC–141b was listed unacceptable as a cleaning solvent in the original 1994 SNAP rulemaking (59 FR 13044)).

Does EPA Need To Be Petitioned in Order To List a Substitute as Unacceptable?

No. EPA has the authority to amend its regulations to initiate changes to SNAP determinations independent of any petitions or notifications received.

What if Some Alternatives Are Not Available in Time for Me To Meet the 2005 Deadline?

Some of the alternatives in the SNAP foam sector were only recently listed as acceptable (64 FR 65037). One alternative, HFC–245fa, is not yet commercially available in large quantities. If some alternatives prove to be technically infeasible or do not become available on a large scale, EPA has the ability to re-consider the proposed deadline.

What if There Is a Technical Constraint That Makes It Extremely Difficult for Me To Meet the SNAP Requirements?

You may be able to continue using HCFC–22 or –142b if you determine that there are no alternatives that can replace them in your specific application. In situations where companies have no technically feasible alternatives, EPA may extend the grandfathering of HCFC–22 or –142b for specific users or end-uses. EPA is not considering specific extensions at this time because the Agency feels that the grandfathering period provides everyone sufficient time to further develop and transition to alternatives. At some time prior to the expiration of the proposed grandfathering period, EPA will consider extending the grandfathering period for those applications where the use of alternatives is infeasible.

What Criteria Would I Need To Meet in Order for EPA To Extend the Grandfathering Period?

In order for EPA to extend the proposed grandfathering period, the Agency would need to be convinced that no technically feasible alternatives would be available. Users who believed they needed to use HCFC–22 or –142b past January 1, 2005, might be subject to the criteria laid out in 40 CFR 82.180 (b)(3). EPA might also require descriptions of the following:

(1) The process or product in which HCFC–22 or –142b is needed;

(2) Substitutes examined and rejected;

(3) Reason for rejection; and

(4) Anticipated date other substitutes will be available and projected time for switching to them.

Although the user is not required to submit all of the documentation to EPA, the Agency may request some of this information in order to determine whether continued use of HCFC–141b, –22 or –142b is warranted.

Can I Comment on This Proposed Rule?

Yes. EPA is soliciting comments on this proposal. The Agency welcomes any feedback on this proposal and urges commenters to provide data in support of their views. EPA also requests that commenters be as specific as possible. For example, if you believe that in a certain end-use there are no alternatives to HCFC–22 or blends thereof, you should provide information on that particular application and why the available alternatives are not technically feasible. Information on where to send comments is provided at the beginning of this notice under **ADDRESSES**.

IV. Economic Impact

At the request of the Office of Management and Budget, EPA evaluated the potential cost impacts of today's proposal. EPA considered the implications of appliance manufacturers' obligations to comply with the Department of Energy's (DOE) 1997 Refrigerator Efficiency Standards. These standards require energy consumption of refrigerators, refrigerator-freezers, and freezers to be reduced by 30% by July 2001. Specifically, EPA examined the potential costs associated with complying with the DOE standards while meeting EPA's SNAP requirements. EPA believes that today's proposal will not result in a significant cost to appliance manufacturers or consumers. In fact, when costs associated with manufacturing refrigerators that will meet DOE energy efficiency requirements are considered, EPA estimates that use of non-HCFC foam blowing agents can result in cost savings.

Based in part on confidential information collected from chemical and appliance manufacturers pertaining to various foam blowing agents and their thermal insulation value, price, and equipment and material requirements, EPA estimates that the cost today to convert to zero-ODP blowing agents would range from approximately $3 to $10 for a mid-size refrigerator (24 cubic feet with a retail price of approximately $900). Accounting for the fact that refrigerators will have to be re-designed to meet the DOE energy efficiency standards when they become effective in July 2001 (*e.g.*, reduced motor power in condenser and/or evaporator motor, reduced gasket heat leak rates, increased insulation, etc.), and because different blowing agents provide different thermal insulation values, EPA estimated the cost impacts associated with different blowing agents after the DOE standards become effective, assuming today's proposal becomes a final rule. For a mid-size refrigerator (24 cubic feet, approximately $900 retail), we estimate the impacts of this proposal would be a cost savings ranging between approximately $2.30 and $3.40 per refrigerator, which in aggregate, would total between approximately $23 million and $34 million per year.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, 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.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any action containing a significant Federal intergovernmental mandate. Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because EPA estimates that this proposed rule will not result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Finally, because this NPRM does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule would not have a significant impact on a substantial number of small entities because the costs of the SNAP requirements as a whole are expected to be minor. There are numerous alternatives available and some users have independently begun to transition away from the substances listed as unacceptable because of the HCFC

production phase-out. The actions herein may well provide benefits to businesses who have transitioned to HCFC alternatives. EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposal. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests (ICRs) by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). These ICRs included five types of respondent reporting and record-keeping activities pursuant to SNAP regulations: submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, record-keeping for substitutes acceptable subject to narrowed use limits, and record-keeping for small volume uses. The OMB Control Numbers are 2060–0226 and 2060–0350.

E. Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks''

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, as the exposure limits and acceptability listings in this proposed rule primarily apply to the workplace.

F. 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 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 NPRM 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 proposal.

G. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposal.

H. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards. This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this proposal.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding the following Appendix J to read as follows:

Appendix J to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the [FR publication date] of the final rule.

FOAM BLOWING UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All foam end-uses	HCFC–141b and blends thereof	Unacceptable	Existing HCFC–141b users are grandfathered until January 1, 2005.
All foam end-uses	HCFC–22, HCFC–142b and blends thereof.	Unacceptable	Existing HCFC–22/–142b users are grandfathered until January 1, 2005.
All foam end-uses	HCFC–124	Unacceptable	Alternatives exist with lower or zero-ODP.

[FR Doc. 00–16966 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF32

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis; correction.

SUMMARY: This document corrects the electronic mail (e-mail) address listed in a document published in the **Federal Register** on June 29, 2000, regarding the reopening of comment period and notice of availability of draft economic analysis for proposed critical habitat determination for the coastal California gnatcatcher. This clarification provides the correct e-mail address for submission of electronic comments on the proposed critical habitat determination of the coastal California gnatcatcher and the draft economic analysis for the proposed critical habitat determination.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, 760–431–9440.

Correction

In the document announcing the reopening of comment period and notice of availability of draft economic analysis for proposed critical habitat determination for the coastal California gnatcatcher, FR 00–16511, beginning on page 40073 in the issue of June 29, 2000, make the following correction in the **ADDRESSES** section. On page 40074 in the 1st column, correct the e-mail address from ''http://pacific.fws.gov/crithab/cg'' to ''fw1cagn@fws.gov.''

Dated: June 29, 2000.

Michael J. Spear,

Manager, California/Nevada Operations.

[FR Doc. 00–17566 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 65, No. 133

Tuesday, July 11, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0514.

Form Number: N/A.

Title: Rules and Procedures Applicable to Commodity Transactions.

Type of Submission: Renewal of Information Collection.

Purpose: USAID finances transactions under Collection Import Programs and needs to assure that the transaction compiles with applicable statutory and regulatory requirements. In order to assure compliance and request refund when appropriate, information is required from host country importers, suppliers receiving from host country importers, suppliers receiving USAID funds and banks making payments for USAID.

Annual Reporting Burden:

Respondents: 308.

Total annual responses: 1991.

Total annual hours requested: 869 hours.

Dated: June 29, 2000.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services Bureau for Management.

[FR Doc. 00–17478 Filed 7–10–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: The Opal Creek Scenic Recreation Area Advisory Council is scheduled to meet on July 29, 2000 for a field visit to the Opal Creek Scenic Recreation Area. The field visit will provide a general overview of the area and current situation related to recreation use and other resource issues. The tour is scheduled to begin at 10 a.m., and will conclude at approximately 3 p.m. The tour will begin at the Oregon Department of Forestry Office at 22965 North Fork Road in Mehema, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area.

The public comment period will begin at 10 a.m. and the field tour will depart after the last presentation. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the July 29 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below. The public is welcome to attend the tour, however, individuals must provide their own transportation throughout the tour and bring a lunch.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: July 3, 2000.

Stephanie Phillips,

Detroit District Ranger.

[FR Doc. 00–17444 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Notice of Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled a public hearing and its regular business meetings to take place in Alexandria, Virginia on Monday, Tuesday, and Wednesday, July 24–26, 2000, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, July 24, 2000

10:30 a.m.–5:00 p.m. Committee of the Whole—Americans with Disabilities Act/Architectural Barriers Act Final Rule (Closed Meeting).

Tuesday, July 25, 2000

9:00 a.m.–Noon Committee of the Whole—Americans with Disabilities Act/Architectural Barriers Act Final Rule (Closed Meeting).

1:30 p.m.–3:00 p.m. Technical Programs Committee.

3:00 p.m.–4:00 p.m. Planning and Budget Committee.

4:00 p.m.–5:00 p.m. Executive Committee.

Wednesday, July 26, 2000

1:30 p.m.–3:30 p.m. Committee of the Whole—Recreation Final Rule (Closed Meeting).

1:30 p.m.–3:30 p.m. Board Meeting.

ADDRESSES: The meetings will be held at the Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 114 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's Report
- Approval of the Minutes of the March 15, 2000 Board Meeting
- Executive Committee Report—Board Meeting Policy
- Planning and Budget Committee Report—Fiscal Year 2000 Spending Plan and Status Report on Agency Goals
- Technical Programs Committee Report—Status Report on Projects

Closed Meeting

- Committee of the Whole—Americans with Disabilities Act/Architectural Barriers Act Final Rule
- Committee of the Whole—Recreation Final Rule

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–17502 Filed 7–10–00; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Robert Chaegon Kim; Order Denying Export Privileges

In the Matter of: Robert Chaegon Kim currently incarcerated at: Allenwood Federal Correctional Institution, Inmate Number: 49756–083, Low Security, P.O. Box 1500, White Deer, Pennsylvania 17887 and with an address at: 20765 Bank Way, Sterling, Virginia 20165.

On July 11, 1997, following a plea of guilty to one count of an Indictment, Robert Chaegon Kim (Kim) was convicted in the United States District Court for the Eastern District of Virginia of violating Section 793(b) and (g) of the Espionage Act (currently codified at 18 U.S.C.A. §§ 792–799 (1976 & Supp. 2000)). Kim was convicted of conspiring to gather national defense information with the intent that the information be used to the advantage of a foreign nation, South Korea.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 2000)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating Section 793 of the Espionage Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999), as amended (65 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating Section 793 of the Espionage Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Kim's conviction for violating Section 793(b) and (g) of the Espionage Act, and after providing notice and an opportunity for Kim to make a written submission to the Bureau of Export Administration before issuing an Order denying his export privileges, as provided in Section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Kim's export privileges for a period of 10 years from the date of his conviction. The 10-year period ends on July 11, 2007. I have also decided to revoke all license issued pursuant to the Act in which Kim had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered.*

I. Until July 11, 2007, Robert Chaegon Kim, currently incarcerated at: Allenwood Federal Correctional Institution, Inmate Number: 49756–083, Low Security, P.O. Box 1500, White Deer, Pennsylvania 17887, and with an address at: 20765 Bank Way, Sterling, Virginia 20165, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the Untied States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition form the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)) and August 10, 1999 (3 CFR, 1999 Comp. 302 (2000)), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 2000)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Kim by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until July 11, 2007.

VI. In accordance with Part 756 of the Regulations, Kim may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Kim. This Order shall be published in the **Federal Register.**

Dated: June 27, 2000.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 00–17476 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–99]

Foreign-Trade Zone 27—Boston, MA; Application for Subzone Status, J. Baker, Inc. (Distribution of Apparel, Footwear and Accessories), Canton, MA; Amendment of Application

Notice is hereby given that the application of the Massachusetts Port Authority, grantee of FTZ 27, requesting authority for special-purpose subzone status for the apparel, footwear and accessories distribution facility of J. Baker, Inc. (J. Baker), has been amended to include an additional site at 120 Shawmut Road (67,200 sq. ft.), Canton, Massachusetts.

The application otherwise remains unchanged.

The comment period is reopened to August 10, 2000.

Dated: June 29, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–17388 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[(A–427–801) (A–428–801) (A–475–801) (A–588–804) (A–559–801) (A–412–801) (A–570–601)]

Continuation of Antidumping Duty Orders: Certain Bearings From France, Germany, Italy, Japan, Singapore, the United Kingdom, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Orders: Certain Bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the People's Republic of China.

SUMMARY: On November 4, 1999 (with respect to France, Germany, Italy, Japan, Singapore, and the United Kingdom) and on April 3, 2000 (with respect to the People's Republic of China (''PRC'')), the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC would be likely to lead to continuation or recurrence of dumping (64 FR 60321, 60309, 60291, 60275, 60287, 60326, and 65 FR 11550, respectively). On June 28, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of these antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 39925). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 15727 and 64 FR 15783, respectively) of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC, pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would be likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margins likely to prevail were the orders to be revoked. [1]

On June 28, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (see, Certain Bearings From China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, 65 FR 39925 (June 28, 2000) and USITC Publication 3309, Investigations Nos. AA1921–143, 731–TA–341, 731–TA–343–345, 731–TA–391–397, and 731–TA–399 (Review) (June 2000)).

[1] See Final Results of Expedited Sunset Reviews: Antifriction Bearings From France, 64 FR 60321 (November 4, 1999); Final Results of Expedited Sunset Reviews: Antifriction Bearings From Germany, 64 FR 60309 (November 4, 1999); Final Results of Expedited Sunset Review: Cylindrical Roller Bearings From Italy, 64 FR 60291 (November 4, 1999); Final Results of Expedited Sunset Reviews: Antifriction Bearings From Japan, 64 FR 60275 (November 4, 1999); Final Results of Expedited Sunset Review: Ball Bearings From Singapore, 64 FR 60287 (November 4, 1999); Final Results of Expedited Sunset Reviews: Antifriction Bearings From the United Kingdom, 64 FR 60326 (November 4, 1999); and Tapered Roller Bearings From the People's Republic of China; Final Results of Full Sunset Review, 65 FR 11550 (March 3, 2000).

Scope

Ball Bearings and Parts Thereof (''BBs'')

These products include all antifriction bearings (''AFBs'') that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (''HTS'') subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof (''SPBs'')

These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50,10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90.

The Department notes that the HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive. Furthermore, we note that the size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.[2]

Tapered Roller Bearings and Parts Thereof (''TRBs'')

The merchandise covered by this antidumping duty order (52 FR 22667, June 15, 1987) includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. The subject merchandise was originally classified under item numbers 680.30, 680.39, 681.10, 692.32 of the Tariff Schedules of the United States Annotated (''TSUSA''); currently, according to the U.S. Customs Service, they are classifiable under item numbers 8482.20.00.10, 8482.20.00.20, 8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8708.99.80.15 and 8708.99.80.80 of the Harmonized Tariff Schedule of the United States (''HTS'')

Although the above HTS and TSUSA subheadings are provided for convenience and customs purposes, the written description remains dispositive.

In the ninth administrative review (62 FR 61276, 61289, November 17, 1997), the Department clarified the scope of the order when it added two additional HTS numbers (8708.99.90.15 and 8708.99.80.80) applicable to imports of the subject merchandise which previously had not been identified in the order. The above HTS numbers correspond to subject merchandise previously classified under TSUSA item number 692.32 in the original antidumping order.

We note that scope rulings are made on an order-wide basis.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on certain bearings from France, Germany, Italy, Japan, Singapore, the United Kingdom, and the PRC. The Department will instruct the U.S. Customs Service to continue to collect antidumping and countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than June 2005.

Dated: July 3, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix A

The following includes clarifications to the scopes of the Department's various antidumping duty orders on antifriction bearings.

Scope Determinations Made in the Final Determinations of Sales at Less Than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 19006, 19019 (May 3, 1989):

Products Covered

—Rod end bearings and parts thereof
—AFBs used in aviation applications
—Aerospace engine bearings
—Split cylindrical roller bearings
—Wheel hub units
—Slewing rings and slewing bearings (slewing rings and slewing bearings were subsequently excluded by the International Trade Commission's negative injury determination. (See International Trade Commission: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, 54 FR 21488 (May 18, 1989))
—Wave generator bearings
—Bearings (including mounted or housed units and flanged or enhanced bearings) ultimately utilized in textile machinery

Products Excluded

—Plain bearings other than spherical plain bearings
—Airframe components unrelated to the reduction of friction
—Linear motion devices
—Split pillow block housings
—Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
—Thermoplastic bearings
—Stainless steel hollow balls

[2] There have been a number of clarifications to the scopes of these orders. For a complete listing, see Appendix A.

—Textile machinery components that are substantially advanced in function(s) or value
—Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope Rulings Completed Between April 1, 1990, and June 30, 1990. (See Scope Rulings, 55 FR 42750 (October 23, 1990))

Products Excluded

—Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope Rulings Completed Between July 1, 1990, and September 30, 1990. (See Scope Rulings, 55 FR 43020 (October 25, 1990))

Products Covered

—Rod ends
—Clutch release bearings
—Ball bearings used in the manufacture of helicopters
—Ball bearings used in the manufacture of disk drives

Scope Rulings Published in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I), 56 FR 31692, 31696 (July 11, 1991)

Products Covered

—Load rollers and thrust rollers, also called mast guide bearings
—Conveyor system trolley wheels and chain wheels

Scope Rulings Completed Between April 1, 1991, and June 30, 1991 (See Notice of Scope Rulings, 56 FR 36774 (August 1, 1991))

Products Excluded

—Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope Rulings Completed Between July 1, 1991, and September 30, 1991 (See Scope Rulings, 56 FR 57320 (November 8, 1991)):

Products Covered

—Snap rings and wire races
—Bearings imported as spare parts
—Custom-made specialty bearings

Products Excluded

—Certain rotor assembly textile machinery components
—Linear motion bearings

Scope Rulings Completed Between October 1, 1991, and December 31, 1991 (See Notice of Scope Rulings, 57 FR 4597 (February 6, 1992))

Products Covered

—Chain sheaves (forklift truck mast components)
—Loose boss rollers used in textile drafting machinery, also called top rollers
—Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope Rulings Completed Between January 1, 1992, and March 31, 1992 (See Scope Rulings, 57 FR 19602 (May 7, 1992))

Products Covered

—Ceramic bearings
—Roller turn rollers
—Clutch release systems that contain rolling elements

Products Excluded

—Clutch release systems that do not contain rolling elements
—Chrome steel balls for use as check valves in hydraulic valve systems

Scope Rulings Completed Between April 1, 1992, and June 30, 1992 (See Scope Rulings, 57 FR 32973 (July 24, 1992))

Products Excluded

—Finished, semiground stainless steel balls
—Stainless steel balls for non-bearing use (in an optical polishing process)

Scope Rulings Completed Between July 1, 1992, and September 30, 1992 (See Scope Rulings, 57 FR 57420 (December 4, 1992))

Products Covered

—Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
—Model 15BM2110 bearings

Products Excluded

—Certain textile machinery components

Scope Rulings Completed Between October 1, 1992, and December 31, 1992 (See Scope Rulings, 58 FR 11209 (February 24, 1993))

Products Covered

—Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products Excluded

—Certain cartridge assemblies comprised of a machine shaft, a machined housing and two standard bearings

Scope Rulings Completed Between January 1, 1993, and March 31, 1993 (See Scope Rulings, 58 FR 27542 (May 10, 1993))

Products Covered

—Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope Rulings Completed Between April 1, 1993, and June 30, 1993 (See Scope Rulings, 58 FR 47124 (September 7, 1993))

Products Covered

—Certain series of INA bearings

Products Excluded

—SAR series of ball bearings
—Certain eccentric locking collars that are part of housed bearing units

Scope Rulings Completed Between October 1, 1993, and December 31, 1993 (See Scope Rulings, 59 FR 8910 (February 24, 1994))

Products Excluded

—Certain textile machinery components

Scope Rulings Completed Between January 1, 1994, and March 31, 1994

Products Excluded

—Certain textile machinery components

Scope Rulings Completed Between October 1, 1994 and December 31, 1994 (See Scope Rulings, 60 FR 12196 (March 6, 1995))

Products Excluded

—Rotek and Kaydon—Rotek bearings, models M4 and L6, are slewing rings outside the scope of the order.

Scope Rulings Completed Between April 1, 1995 and June 30, 1995 (See Scope Rulings, 60 FR 36782 (July 18, 1995))

Products Covered

—Consolidated Saw Mill International (CSMI) Inc.—Cambio bearings contained in CSMI's sawmill debarker are within the scope of the order.
—Nakanishi Manufacturing Corp.—Nakanishi's stamped steel washer with a zinc phosphate and adhesive coating used in the manufacture of a ball bearing is within the scope of the order.

Scope Rulings Completed Between January 1, 1996 and March 31, 1996 (See Scope Rulings, 61 FR 18381 (April 25, 1996))

Products Covered

—Marquardt Switches—Medium carbon steel balls imported by Marquardt are outside the scope of the order.

Scope Rulings Completed Between April 1, 1996 and June 30, 1996 (See Scope Rulings, 61 FR 40194 (August 1, 1996))

Products Excluded

—Dana Corporation—Automotive component, known variously as a center bracket assembly, center bearings assembly, support bracket, or shaft support bearing, is outside the scope of the order.
—Rockwell International Corporation—Automotive component, known variously as a cushion suspension unit, cushion assembly unit, or center bearing assembly, is outside the scope of the order.
—Enkotec Company, Inc.—''Main bearings'' imported for incorporation into Enkotec Rotary Nail Machines are slewing rings and, therefore, are outside the scope of the order.

[FR Doc. 00–17387 Filed 7–10–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–601 (TRBs/Hungary);*et al.*)]

Revocation of Antidumping Duty Orders on Certain Bearings From Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom.

SUMMARY: On November 4, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the following antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom would be likely to lead to continuation or recurrence of dumping:

Product	Country	ITA case no.	FR cite
Tapered roller bearings	Hungary	A–437–601	64 FR 60272
Tapered roller bearings (4 inches and under)	Japan	A–588–054	64 FR 60317
Tapered roller bearings (Over 4 inches)	Japan	A–588–604	64 FR 60266
Tapered roller bearings	Romania	A–485–602	64 FR 60269
Ball bearings	Romania	A–485–801	64 FR 60313
Ball bearings	Sweden	A–401–801	64 FR 60282
Cylindrical roller bearings	France	A–427–801	64 FR 60321
Cylindrical roller bearings	Germany	A–428–801	64 FR 60309
Cylindrical roller bearings	Italy	A–475–801	64 FR 60291
Cylindrical roller bearings	Japan	A–588–804	64 FR 60275
Cylindrical roller bearings	Sweden	A–401–801	64 FR 60321
Cylindrical roller bearings	United Kingdom	A–412–801	64 FR 60326
Spherical plain bearings	Germany	A–428–801	64 FR 60309
Spherical plain bearings	Japan	A–588–804	64 FR 60275

On June 28, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the above antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 39925). Therefore, pursuant to 19 CFR 351.222(i)(1), the Department is publishing notice of the revocation of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or James Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–3330, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 15727 and 64 FR 15783, respectively) of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins were the orders revoked. (*See* list below.)

On June 28, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Certain Bearings form China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom,* 65 FR 39925, and USITC Publication 3309 (June 2000), Investigation Nos. AA–1921–143, 731–TA–341, 731–TA–343–345, 731–TA–391–397, and 731–TA–399 (Review)).

Scope of the Orders

These orders cover shipments of certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom as described in the Appendix.

Determination

As a result of the determinations by the Commission that revocation of the antidumping duty orders would not be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the revocation of the antidumping duty orders on certain bearings from Hungary, Japan, Romania, Sweden, France, Germany, Italy, and the United Kingdom. The Department will instruct the Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix

A. Description of the Merchandise

1. *Tapered Roller Bearings (''TRBs'')*

a. *Hungary:* The products subject to this order are shipments of TRBs and parts thereof, finished and unfinished, from Hungary. This merchandise is currently classifiable under the following item numbers of the Harmonized Tariff Schedule (''HTS'') of the United States: 8482.00.10, 8482.20.00,8482.20.00.30, 8482.20.00.40, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8708.99.80.15, and 8708.99.80.80. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

b. *Japan (four inches or less):* Imports covered by the A–588–054 findings are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under HTS numbers 8482.20.00 and 8482.99.30.

The HTS item numbers listed above are provided for convenience and customs purposes. The written descriptions remain dispositive.

c. *Japan (over four inches):* Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 findings are not included within the scope of this order, except for those manufactured by NTN Corporation. This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. In addition, in accordance with our February 2, 1995, final scope determination regarding Koyo Seiko's rough forgings, Koyo's rough forgings are also included within the scope of this order. The HTS item numbers listed above for the A–588–604 order are provided for convenience and customs purposes. The written descriptions remain dispositive.

d. *Romania:* The products subject to this order are TRBs, including flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under HTS item numbers 8482.20.00.10, 8482.20.00.20. 8482.20.00.30, 8482.20.00.50, 8482.20.00.60, 8482.20.00.70, 8482.20.00.80, 8482.91.00.50, 8482.99.15.00, 8482.99.15.40, 8482.99.15.80, 8483.20.40.80, 8483.20.80.80, 8483.30.80.20, 8708.99.80.15, and 8708.99.80.80.

2. Antifriction Bearings (''AFBs'')

The AFBs (other than TRBs) covered by these orders, mounted or unmounted, and parts thereof, constitute the following three types of subject merchandise:

a. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05,8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

b. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

c. *Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends. Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50,10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90. The HTS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the AFB orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scopes of these orders.

B. Scope Determinations

The Department has issued numerous clarifications of the scope of the AFB orders. Interested parties can access all scope determinations for individual countries on the Web at www.ita.gov/sunset/ss.home.htm.

[FR Doc. 00–17513 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–811]

Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce determines that solid fertilizer grade ammonium nitrate from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value. The estimated dumping margins are shown in the Continuation of Suspension of Liquidation section of this notice. On May 19, 2000, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation (''the Agreement''). However, pursuant to a request from the Petitioner, we have continued and completed the investigation.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4243 or (202) 482-3818, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Case History

Since the *Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation,* 65 FR 1139 (January 7, 2000) (''*Preliminary Determination*''), the following events have occurred: on February 15, 2000, one importer, ConAgra International Fertilizer Company (''ConAgra''), requested that the Department determine critical circumstances on a company-specific basis with respect to JSC Acron (''Acron''), a mandatory respondent in this investigation. In response to our request pursuant to section 351.301(c)(3)(i) of the Department's regulations, on February 16, 2000, Petitioner, the Committee for Fair Ammonium Nitrate Trade (''COFANT''), submitted additional surrogate factor value information, and Nevinka provided 1998 financial statements of another Polish ammonium nitrate producer. ConAgra provided information and argument concerning surrogate country selection with respect to Poland and Venezuela. Petitioner, JSC Nevinnomyssky Azot (''Nevinka'') and ConAgra submitted case briefs on April 28, 2000. On May 3, 2000, all three parties submitted rebuttal briefs. On February 7, 2000, Petitioner requested a public hearing, but withdrew that request on May 2, 2000.

Continuation of Investigation

On May 19, 2000, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation. On June 29, 2000, we received a request from Petitioner requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. If the ITC determines that material injury exists, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms.

Scope of the Investigation

For purposes of this investigation, the products covered are solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') is January 1, 1999 through June 30, 1999.

Critical Circumstances

On November 1, 1999, the Department issued its preliminary affirmative critical circumstances finding with respect to imports of ammonium nitrate from the Russian Federation. *See Preliminary Determination of Critical Circumstances: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation (''Preliminary Determination of Critical Circumstances''),* 64 FR 60422 (November 5, 1999). Specifically, we determined, pursuant to section 733(e) of the Act, that there was a history of injurious dumping of the subject merchandise and that imports were massive over a relatively short period of time. We also stated that we would make a final determination of critical circumstances on a company-specific basis, as appropriate, in our final determination in this investigation.

As noted in the *Preliminary Determination,* the Department requested information regarding shipments of ammonium nitrate from Nevinka on November 8, 1999. On November 23, 1999, Nevinka provided the requested information, and as discussed below, established its entitlement to a separate rate. Previously, on September 15, 1999, Acron notified the Department that it would not participate in the investigation and, subsequently, did not provide any information regarding critical circumstances or its entitlement to a separate rate. Because there is a history of injurious dumping, in this final determination, we need only determine whether imports were massive over a relatively short period of time. We are making this determination separately with respect to Nevinka and the Russia-wide entity. Our findings are as follows:

Nevinka

We analyzed Nevinka's November 23, 1999 data and found that Nevinka's exports were massive within the meaning of section 733(e)(1)(B) of the Act. Because this information is proprietary, see the proprietary discussion and analysis in our May 22, 2000 memorandum *Antidumping Duty Investigation of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Final Determination of Critical Circumstances (''Final Determination of Critical Circumstances Memorandum'').*

Russia-Wide Entity

With regard to the critical circumstances finding for the Russia-wide entity, we have determined that massive imports exist. *See* our discussion and analysis of this issue in Comment 3 and Comment 4 of the June 30, 2000. *Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Ammonium Nitrate from the Russian Federation for the Period of Investigation (''POI'') Covering January 1, 1999 Through June 30, 1999 (''Issues and Decision Memorandum'')* (see Analysis of Comments Received section below). We included Acron in the Russian-wide entity because it failed to establish its entitlement to a separate rate.

Nonmarket Economy Country Status

The Department has treated the Russian Federation (''Russia'') as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review*, 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787 (November 19, 1997); and *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation*, 60 FR 16440 (March 30,

1995). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The Department has continued to treat the Russian Federation as an NME for this final determination, because no party has sought revocation of the NME status in this investigation.

Surrogate Country

When the Department is investigating imports from a NME, section 773(c) of the Act requires that the Department base normal value (''NV'') on the NME producer's factors of production, valued in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, utilizes, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of individual factor values are discussed in the NV section below.

In its *Preliminary Determination*, the Department determined that Poland, Tunisia, Colombia, Turkey, South Africa, and Venezuela were countries comparable to the Russian Federation in terms of overall economic development. *See Memorandum to Rick Johnson, Program Manager, from Jeff May, Director, Office of Policy; Re: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Nonmarket Economy Status and Surrogate Country Selection*. Petitioner submitted information on the record indicating that Poland, Turkey and South Africa are significant producers of identical merchandise. *See* Submission from Akin, Gump, Strauss, Hauer & Feld, L.L.P., November 5, 1999. Nevinka submitted information in support of its argument that Venezuela is a significant producer of comparable merchandise. *See* Submission from White & Case, November 5, 1999. As noted in the *Preliminary Determination of Solid Agricultural Grade Ammonium Nitrate from the Russian Federation; Selection of a Surrogate Country (''Surrogate Country Memorandum'')*, in the event that more than one country satisfied both statutory requirements, the Department has a preference to narrow the field to a single country on the basis of data availability and quality. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the Peoples' Republic of China*, 59 FR 55625 (November 8, 1994).

Congress provided the Department with broad discretion in selecting surrogate countries in NME cases. *See* section 773(c)(1)(B) of the Act (valuation of factors of production shall be based on the best available information from a market economy country(s) considered to be appropriate); *see, also, Lasko Metals* v. *United States*, 43 F3d. 1442, 143 n.3 (Fed. Cir. 1994). Consequently, in its *Preliminary Determination*, the Department determined that Poland qualified as an appropriate surrogate country because it satisfied the statutory criteria listed. Furthermore, we were able to obtain publicly available, contemporaneous information on the majority of factor inputs required.

While we have used surrogate prices for certain factors from countries other than the selected surrogate country in previous cases, it is the Department's preference and practice to rely on factor value information from one surrogate country to the extent possible. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 21058 (May 18, 1992). Accordingly, in our *Preliminary Determination*, we calculated NV using publicly available information from Poland to value Nevinka's factors of production, with one exception, monoethanolamine, which we valued using Venezuelan data, since there was no Polish data available at the time of the issuance of the *Preliminary Determination.*

In accordance with section 351.301(c)(3)(i) of the Department's regulations, interested parties were provided the opportunity to place additional publicly available information on the record within 40 days after the date of publication of the *Preliminary Determination.* Petitioner, Nevinka and ConAgra submitted comments on February 16, 2000. In these submissions, Petitioner submitted additional surrogate factor value information; Nevinka provided 1998 financial statements of an additional Polish ammonium nitrate producer; and ConAgra provided argument concerning surrogate country selection. For the final determination, we have continued to rely on Poland as our primary surrogate country in this investigation for the final determination. For a full discussion of the Department's position in this regard, *see* Comment 1 in our *Issues and Decision Memorandum.*

Separate Rates

Nevinka

In our *Preliminary Determination,* we preliminarily determined that Nevinka met the criteria for the application of a separate rate. *See Preliminary Determination* at 1142. At verification, we found no discrepancies with the information provided in Nevinka's questionnaire response that would cause the Department to reverse this determination. In addition, we have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separate rates determination with respect to Nevinka. We, therefore, determine that Nevinka will be assigned an individual dumping margin.

Russia-Wide Rate

As stated in the *Preliminary Determination,* companies that failed to respond to our questionnaires or reported no shipments were assigned the Russia-wide rate.

As noted in the *Preliminary Determination,* U.S. import statistics indicate that the total quantity and value of U.S. imports of solid fertilizer grade ammonium nitrate from the Russian Federation are greater than the total quantity and value of solid fertilizer grade ammonium nitrate reported by all Russian companies that submitted responses. Given this discrepancy, we have concluded that not all producers/exporters of Russian solid fertilizer grade ammonium nitrate with shipments during the POI responded to our questionnaire. Since our *Preliminary Determination,* we have received no information which contradicts the information already on the record. Accordingly, for the final determination, we are applying a single antidumping duty deposit rate—the Russia-wide rate—to all producers/exporters in the Russian Federation, other than those specifically identified below under ''Suspension of Liquidation.''

As noted in our *Preliminary Determination,* the Russia-wide antidumping rate is based on adverse facts available, in accordance with section 776 of the Act. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding

under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Use of facts available is warranted in this case because the producers/exporters other than Nevinka failed to respond to the Department's questionnaire. Therefore, in accordance with section 776(a)(2)(D) of the Act, we find that use of facts available is warranted with respect to all companies but Nevinka.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. By failing to respond to the Department's questionnaire and failing to provide any reasoning for not responding, Russian producers/exporters of ammonium nitrate, other than Nevinka, failed to act to the best of their ability in this investigation. Therefore, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As an adverse inference, the Department has presumed that these producers/exporters are under government control and has assigned them a common, Russia-wide rate based on adverse inferences.

In accordance with our standard practice, as adverse facts available, we are assigning to the Russia-wide entity (i.e., those companies not receiving a separate rate), which did not cooperate in the investigation, the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan,* 63 FR 40434 (July 29, 1998)). Because the highest margin on the record is the calculated margin for Nevinka, the Department is assigning this rate as the adverse facts available Russia-wide rate. Accordingly, for the final determination, the Russia-wide rate is 253.98 percent.

Section 776(c) of the Act requires the Department to corroborate secondary information used as facts available to the extent practicable. Secondary information is information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. Since the margin selected represents Nevinka's calculated margin in this investigation, this margin does not represent secondary information, and, thus, does not need to be corroborated.

Affiliation

Nevinka originally reported its U.S. sales as CEP sales, claiming that it was affiliated with its U.S. trading company, Transammonia, through Transammonia's stock ownership of Nevinka and a close supplier relationship between Nevinka and Transammonia. In our *Preliminary Determination,* we examined the facts on the record and did not find the existence of an affiliation, as defined by the statute, between Nevinka and Transammonia. We noted that Transammonia's ownership of Nevinka is below the five percent requirement under section 771(33)(E) of the Act. In addition, we found no evidence of (and respondent has not argued for) a basis for affiliation with respect to the statutory definitions under section 771(33), subsections (A) through (D) or subsection (F), of the Act. Furthermore, with respect to section 771(33)(G) of the Act, we did not find that Nevinka's relationship with Transammonia constitutes a ''close supplier relationship'' which would indicate control by either party over the other.

Since the *Preliminary Determination,* we conducted a verification of the information on the record concerning the relationship between Nevinka and Transammonia. We found no evidence that warranted reversing our finding that Transammonia and Nevinka are not affiliated. *See* the proprietary discussion of this issue on page 2 and verification exhibits 11 and 18 of our April 19, 2000 verification report, ''*Sales and Factors of Production in the Antidumping Duty Investigation of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: JSC Nevinnomyssky Azot (''Nevinka'')*,'' and Comment 6 of our *Issues and Decision Memorandum.* Thus, for the final determination, we have continued to treat transactions between Transammonia and Nevinka as EP transactions.

Fair Value Comparisons

To determine whether sales of solid fertilizer grade ammonium nitrate products from the Russian Federation sold to the United States by Nevinka were made at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

Although Nevinka claimed, in its questionnaire response, that its sales through Transammonia should be considered CEP sales, as discussed above, the Department has determined that the relationship between Nevinka and Transammonia does not meet the statutory definition of affiliation. Therefore, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and because there is no indication that treatment as CEP is otherwise warranted, for the final determination, we have examined Nevinka's sales to Transammonia as EP sales in accordance with section 772(a) of the Act. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared the POI-wide weighted-average EP to NV based on factors of production. Consequently, we calculated EP based on the same methodology as in the *Preliminary Determination.*

Normal Value

For the final determination, we calculated NV as we did in the *Preliminary Determination,* based on factors of production reported by Nevinka. We valued all the input factors using publicly available published information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

Usage Rates and Factor Valuations

In our calculation of NV, we used the same factors of production and the same surrogate values as in the *Preliminary Determination,* with the following exceptions:

- We revised our calculations for lilamin and caustic magnesite by using the actual usage rates found at verification to have applied during the period in which Nevinka produced ammonium nitrate for shipment to the United States. *See* Comment 7 of our *Issues and Decision Memorandum.*
- We revised our calculation of ammonia synthesis catalyst to account for the actual purchase price paid for a market-economy input that the Department found to be incorrectly reported at verification. *See* Comment 8 of our *Issues and Decision Memorandum.*
- We revised our valuation of catalysts to include the data submitted by Petitioner on February 16, 2000 concerning catalysts. *See* our proprietary discussion of these catalysts in our *Analysis Memorandum for the Final Determination: JSC Nevinnomyssky Azot* (''*Nevinka*''), May

22, 2000 (''*Analysis Memorandum*''). In addition, in applying freight calculations for catalysts in accordance with *Sigma* v. *United States,* 117 F.2d 1401 (Fed. Cir. 1997) we used the freight distance from the nearest port to Nevinka as facts available since Nevinka did not report the freight distances for catalysts in its questionnaire response.

• We revised the reported labor factor to account for corrections to the response made at verification. (*See,* page 2 of the April 19, 2000 verification report and verification exhibit 3.) In addition, we revised the wage rate used to account for the updated Russian regression-based wage rate, revised in May 2000, at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, *http://ia.ita.doc.gov/wages/98wages/gdp00web.htm.*

• We recalculated the surrogate depreciation ratio as a percentage of COM plus overhead, as discussed in the *Memorandum from Doreen Chen to Edward Yang re Analysis of Ministerial Error Allegation* (''*Ministerial Error Memo*''), February 1, 2000 and Comment 2 of our *Issues and Decision Memorandum.*

Verification

As provided in section 782(i) of the Act, we verified the information submitted by Nevinka for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the *Issues and Decision Memorandum.* Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn.* The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Suspension of Liquidation

On May 19, 2000, the Department signed a suspension agreement with the Ministry of Trade of the Russian Federation. Pursuant to that suspension agreement, we have instructed Customs to terminate the suspension of liquidation of all entries of solid fertilizer grade ammonium nitrate from Russia. Any cash deposits of entries of solid fertilizer grade ammonium nitrate from Russia shall be refunded and any bonds shall be released.

On June 29, 2000, we received a request from petitioner requesting that we continue the investigation. Pursuant to this request, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following weighted-average dumping margins:

Exporter/manufacturer	Weighted-average margin (percent)
JSC Nevinnomyssky Azot	253.98
Russia-Wide	253.98

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the Agreement will have no force or effect, and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If the ITC determines that such injury does exist, the Agreement shall remain in force but the Department shall not issue an antidumping order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsections (d) and (l) of the Act, and (3) the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* section 734(f)(3)(B) of the Act.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix 1—Issues in Decision Memorandum

1. Surrogate Country Selection
2. Correction of Clerical Errors
3. Critical Circumstances for Acron
4. Critical Circumstances for ''All Others'
5. Valuation of Market-Economy Freight Services
6. Affiliation between Nevinka and Transammonia
7. Valuation of Lilamin and Caustic Magnesite
8. Valuation of Ammonia Synthesis Catalyst

[FR Doc. 00–17514 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Antidumping Duty Order: Bulk Aspirin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, or Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3853, and (202) 482–1279, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all citations to the regulations of the Department of Commerce (''the Department'') are to 19 CFR Part 351 (1998).

Scope of Order

The product covered by this antidumping duty order is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia (''USP'') 23. It is classified under the Harmonized Tariff

Schedule of the United States (''HTSUS'') subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the Handbook of Nonprescription Drugs, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On June 27, 2000, the Department published in the **Federal Register** (65 FR 39598), its ''Notice of Amended Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from the PRC'' in which the final antidumping duty margins for Shandong Xinhua Pharmaceutical Factory and Jilin Pharmaceutical Import and Export Corporation were revised. The revised margins are listed below.

On June 30, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (''ITC'') notified the Department that a U.S. industry is ''threatened with material injury,'' within the meaning of section 735(b)(1)(A)(ii) of the Act, by reason of less-than-fair-value imports of bulk aspirin from the People's Republic of China (''PRC'').

According to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted without the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires the Customs Service to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is threat-based.

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) of the Act is applicable to this order. Therefore, the Department will direct the Customs Service to assess, upon further advice, antidumping duties on all unliquidated entries of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and to terminate the suspension of liquidation for entries of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct the Customs Service to refund any cash deposits made, or bonds posted, between the publication date of the Department's preliminary antidumping determination and the publication date of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Factory	16.51
Jilin Pharmaceutical Import and Export Corporation	10.85
PRC-wide Rate	144.02

This notice constitutes the antidumping duty order with respect to bulk aspirin from the PRC, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with sections 736(a) and 19 CFR 351.211.

Dated: July 5, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–17515 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

[I.D. 063000D]

Notice of Intent to Prepare an Environmental Impact Statement Regarding Issuance of an Incidental Take Permit and Enhancement of Survival Permit to Simpson Timber Company, California Timberlands, for Forest Management in Del Norte and Humboldt Counties, California

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct public scoping and prepare an environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), we, the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) intend to prepare an Environmental Impact Statement (EIS) regarding an expected application from the Simpson Timber Company, California Timberlands (Simpson) for an incidental take permit for take of threatened salmonid species and an enhancement of survival permit for coverage of an unlisted fish species and unlisted amphibian species, in accordance with section 10(a) of the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, Simpson is preparing a Habitat Conservation Plan/Candidate Conservation Agreement (Plan/Agreement) and applications for an incidental take permit and an enhancement of survival permit (Permits) related to forest management and timber operations on a portion of its lands in Del Norte and Humboldt Counties, California. Simpson expects to apply for an incidental take permit pursuant to section 10(a)(1)(B) of the ESA from NMFS for the coho salmon (*Oncorhynchus kisutch*) and chinook salmon (*O. tshawytscha*), and may also seek coverage for one currently unlisted species, coastal steelhead (*O. mykiss irideus*) under the incidental take permit should this species be listed in the future. Simpson is also preparing an application for an enhancement of survival permit under the Candidate Conservation Agreement with

Assurances Policy of the FWS for the coastal cutthroat trout (*O. clarki clarki*), southern torrent salamander (*Rhyacotriton variegatus*) and tailed frog (*Ascaphus truei*).

We are furnishing this notice in order to advise other agencies and the public of our intentions and to announce the initiation of a public scoping period during which other agencies and the public are invited to provide written comments on the scope of issues to be included in the EIS.

DATES: We request comments be received on or before August 10, 2000. Public scoping meetings, at which oral and written comments can be submitted, are scheduled for July 11, 2000, from 3:00 p.m. to 5:30 p.m. and from 6:00 p.m. to 8:30 p.m., at the Cultural Center Atrium, 1001 Front Street, Crescent City, CA, and July 12, from 3:00 p.m. to 5:30 p.m. and from 6:00 p.m. to 8:30 p.m., at the Double Tree Hotel, 1929 4th Street, Eureka, CA.

ADDRESSES: Comments regarding the scope of the EIS and requests for additional information should be addressed to Mr. James Bond, NMFS, or Ms. Amedee Brickey, FWS, both located at 1655 Heindon Road, Arcata, CA 95521. Written comments may also be sent by facsimile to (707) 822–8411. Comments received will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8:00 a.m. to 5:00 p.m.) at the above address. All comments received, including names and addresses, will become part of the official administrative record and may be available to the public.

FOR FURTHER INFORMATION CONTACT: Mr. James Bond, NMFS, or Ms. Amedee Brickey, or Mr. John Hunter FWS, at the address above, or telephone (707) 822–7201.

SUPPLEMENTARY INFORMATION: Simpson owns and manages approximately 457,000 acres of commercial timberland in Del Norte, Humboldt and Trinity Counties, California. This property occurs in watersheds with habitat important to the conservation of salmonid species in the North Coast region of California, including, but not limited to, the Winchuck River, Smith River, Klamath River and its tributaries, Redwood Creek, Little River, Mad River, tributaries to Humboldt Bay, Eel River, the Van Duzen River and others. Many of these streams are listed as water quality limited under Section 303(d) of the Clean Water Act. Some of Simpson's management activities have the potential to impact salmonid and other species subject to protection under the ESA. Section 10(a)(1)(B) of the ESA contains provisions for the issuance of incidental take permits to non-Federal land owners for the take of endangered and threatened species, provided, in part, the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Simpson is preparing a 50-year Plan/Agreement that is intended to provide for management of approximately 431,000 acres of its California properties in Del Norte and Humboldt Counties in a manner that will minimize and mitigate the impacts of take of certain salmonid species currently listed under the ESA or which may be listed during the life of the Plan/Agreement. Once completed, it is expected that Simpson will submit the Plan/Agreement to NMFS as part of an application for the permits.

The Candidate Conservation Agreement with Assurances Policy (64 FR 32706–32716 and 64 FR 32726–32736) contains provisions for the issuance of enhancement of survival permits (section 10(a)(1)(A) of the ESA) to non-Federal land owners to cover the take of currently unlisted species in the event that such species are listed in the future, provided, in part, that the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery in the wild of any species. An applicant for an enhancement of survival permit must prepare and submit a permit application to the FWS for approval along with an Agreement containing a strategy for covered lands that demonstrates the applicant's appropriate contribution to precluding or removing the need to list the species as threatened or endangered under the ESA. The applicant must ensure that adequate funding for the Agreement will be provided. Once completed, it is anticipated that Simpson will submit its Plan/Agreement to the FWS as part of its application for an enhancement of survival permit.

Activities that Simpson may propose for Permit coverage include mechanized timber harvest; forest product transportation; road and landing construction, use, maintenance and abandonment; site preparation; tree planting; certain types of vegetation management; fertilizer application; silvicultural thinning and other silvicultural activities; fire suppression; rock quarries and borrow pit operations; gravel extraction; aquatic habitat restoration and other forest management activities. The Plan/Agreement would also likely cover certain monitoring activities and scientific work in the Plan area.

NMFS will evaluate the incidental take permit application and associated Plan in accordance with section 10(a)(1)(B) of the ESA and its implementing regulations. The FWS will evaluate the enhancement of survival permit application and associated Agreement in accordance with section 10(a)(1)(A) of the ESA, its implementing regulations and the Candidate Conservation Agreement with Assurances Policy.

The environmental review will analyze the action as proposed by Simpson. Simpson's proposal is expected to seek authorization for take of the covered species incidental to the activities that are described above. The habitat conservation plan prepared by Simpson in support of the applications described above will describe the impacts of the taking for which authorization is sought. In addition, the HCP will propose a conservation strategy to minimize and mitigate those impacts to the maximum extent practicable and to satisfy other applicable requirements of the ESA and its implementing regulations. This conservation strategy is expected to include enhanced stream buffers, a sediment reduction program, a monitoring program, adaptive management measures and certain salmonid, fish and aquatic habitat restoration. The HCP will also identify alternatives to the conservation plan considered by Simpson and explain why those alternatives were not selected. Under Simpson's Plan alternative, we would issue the requested permits and Simpson would implement its Plan within the Plan area.

The environmental review will also analyze a full range of reasonable alternatives to the proposed action, including a No Action alternative, and the associated impacts of each. We are currently in the process of developing alternatives for analysis. In connection with developing alternative approaches, we will consider, for example, modified lists of covered species, modified permit coverage areas, i.e., portions of the landscape subject to permit coverage, modified permit terms and different mitigation/aquatic resource management strategies that would serve the purpose of minimizing and mitigating the impacts of incidental take. We will consider other project alternatives recommended during this scoping process in order to develop a full range of reasonable alternatives. We invite comments and suggestions from all interested parties to ensure that a reasonable range of alternatives and issues related to them are addressed and that all significant issues are identified.

We will conduct an environmental review of the permit application and the Plan/Agreement and prepare an Environmental Impact Statement in accordance with NEPA requirements, as amended (42 U.S.C. 4321 et seq.), and its implementing regulations (40 CFR parts 1500 through 1508) and in accordance with other applicable Federal laws and regulations and policies and procedures of the Services for compliance with those regulations. The Services estimate that the draft EIS will be available for public review during the fourth quarter of 2000.

Dated: July 5, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: June 30, 2000.

Elizabeth Stevens,

Acting California/Nevada Operations Manager, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 00–17509 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 063000A]

Marine Mammals; File No. 373–1575

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Point Reyes Bird Observatory (Dr. Sarah Allen, Principal Investigator), 4990 Shoreline Highway, Stinson Beach, CA 94970, applied in due form for a permit to take harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 10, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 (562/980–4001);and

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115 (206/526–6150).

FOR FURTHER INFORMATION CONTACT: Simona Roberts or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant seeks authorization to monitor and research all age, sex and reproductive classes of harbor seals and northern elephant seals along the Point Reyes National Seashore, and in the Gulf of the Farallones, San Francisco Bay, and Russian River, California. Proposed research takes of harbor seals would involve capturing, tagging, dye-marking, measuring, blood collecting, bacterial swabbing, scat collecting, and unintentional mortality. Proposed research takes of northern elephant seals would involve capturing, tagging, dye-marking, blood collecting, and bacterial swabbing. Unintentional harassment of California sea lions and Steller sea lions is also proposed.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–17510 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.062900D]

Marine Mammals; Permit Nos. 914–1470–01 and 779–1339–02

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

ACTION: Receipt of applications for amendment.

SUMMARY: Notice is hereby given that University of Southern Mississippi, Box 5018, Hattiesburg, MS 39401, and National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, have requested an amendment to scientific research Permit No. 914–1470 and 779–1339, respectively.

DATES: Written or telefaxed comments must be received on or before August 10, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment **in the following office(s):**

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Simona Roberts, 301/713–2289.

SUPPLEMENTARY INFORMATION: The amendment request to Permit No. 914–1470, issued on November 12, 1998 (63 FR 64066), and Permit No. 779–1339, issued on July 8, 1997 (62 FR 38069) are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 914–1470 authorizes the permit holder to: import fluid and tissue samples of bottlenose dolphin, beluga whale and Pacific white-sided dolphin from the Bahamas, Honduras and Finland. The permit holder requests authorization to: import blood samples of Southern elephant seals from Argentina.

Permit No. 779–1339 authorizes the permit holder to: conduct research that involves biopsy sampling, photo-identification and photo-grammetry on a variety of marine mammal species in the North Atlantic ocean, including the Gulf of Mexico, Caribbean Sea, U.S. territorial seas and international waters. The Holder wants to increase the number of animals authorized to be biopsied sampled.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–17511 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Participation in the Special Access Program

July 5, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs suspending participation in the Special Access Program.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Committee for the Implementation of Textile Agreements (CITA) has determined that LDP, LLC has violated the requirements for participation in the Special Access Program, and has suspended LDP, LLC from participation in the Program for the period August 1, 2000 through July 31, 2003.

Through the letter to the Commissioner of Customs published below, CITA directs the Commissioner to prohibit entry of products under the Special Access Program by or on behalf of LDP, LLC during the period August 1, 2000 through July 31, 2003, and to prohibit entry by or on behalf of LDP, LLC under the Program of products manufactured from fabric exported from the United States during that period.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 5, 2000.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: The purpose of this directive is to notify you that the Committee for the Implementation of Textile Agreements has suspended LDP, LLC from participation in the Special Access Program for the period August 1, 2000 through July 31, 2003. You are therefore directed to prohibit entry of products under the Special Access Program by or on behalf of LDP, LLC during the period August 1, 2000 through July 31, 2003. You are further directed to prohibit entry of products under the Special Access Program by or on behalf of LDP, LLC manufactured from fabric exported from the United States during the period August 1, 2000 through July 31, 2003.

Sincerely,

Richard Steinkamp,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–17437 Filed 7–10–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m. Friday, July 7, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17583 Filed 7–7–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, July 14, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17584 Filed 7–7–00; 11:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, July 21, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17585 Filed 7–7–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, July 28, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–17586 Filed 7–7–00; 11:29 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Vessel Operation Report; ENG Forms 3925, 3925B, 3925P, 3925C; OMB Number 0710–0006.

Type of Request: Revision.

Number of Respondents: 1,321.

Responses Per Respondent: 173 (average).

Annual Responses: 228,752.

Average Burden Per Response: 5 minutes.

Annual Burden Hours: 44,479.

Needs and Uses: The information collected is the basic data from which the Corps of Engineers compiles and publishes waterborne commerce statistics. The data is collected from vessel operating companies. The data is used to report to Congress and to perform cost benefit studies for new projects, rehabilitation projects, and operations and maintenance of existing projects. The Waterborne Commerce Statistics Center, Army COE, is the sole authorized collector of data on domestic waterborne commerce. The WCSC provides the information to the Maritime Administration (MARAD), Department of Energy, Tennessee Valley Authority, Interstate Commerce Commission, the Coast Guard, State taxing agencies, U.S. Customs Service, Department of Treasury, and the Internal Revenue Service.

Affected Public: Business or Other For-Profit.

Frequency: Monthly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Jim Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for U.S. Army COE, Room 10202, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 15, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17408 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: USAF Museum System Volunteer Application/Registration; AF Form 3569; OMB Number 0701–0127.

Type of Request: Revision.

Number of Respondents: 255.

Responses Per Respondent: 1.

Annual Responses: 255.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 64.

Needs and Uses: The information collection requirement is necessary to provide: (a) The general public an instrument to interface with the USAF Museum System Volunteer Program; (b) the USAF Museum System the means with which to select respondents pursuant to the USAF Museum System Volunteer Program. The primary uses of the information collection includes the evaluation and placement of respondents within the Museum System Volunteer Program.

Affected Public: Individuals or Households.

Frequency: One-Time.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 15, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17409 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Number: Marine Corps Advertising Awareness and Attitude Tracking Study; OMB Number 0704–0155.

Type of Request: Reinstatement.

Number of Respondents: 1,600.

Responses per Respondent: 2.

Annual Responses: 3,200.

Average Burden per Response: 21 minutes.

Annual Burden Hours: 1,120.

Needs and Uses: The Marine Corps Advertising Awareness and Attitude Tracking Study is used by the Marine Corps to measure the effectiveness of current advertising campaigns. The study, a semi-annual telephonic survey, also provides data concerning perceptions of young males and females towards the advantages of joining the Marine Corps, specific attributes of Marines, and the Marine Corps in general. This information is also used to plan future advertising campaigns. Respondents are young men and women between the ages of 16–19 years of age who have no prior experience in the military.

Affected Public: Individuals or Households.

Frequency: Semi-Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17410 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Form Number, and OMB Number: Health Insurance Claim Form; HCFA Form 1500; OMB Number 0720–0001.

Type of Request: Reinstatement.

Number of Respondents: 14,500,000.

Responses per Respondent: 1.

Annual Responses: 14,500,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 3,625,000.

Needs and Uses: This information collection requirement is used by TRICARE/CHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to TRICARE/CHAMPUS beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability and whether services received are benefits. Use of this form continues TRICARE/CHAMPUS commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; Federal Government; State, Local or Tribal Government.

Frequency: On Occasion.

Respondents Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt. Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written request for copies of the information collection proposal should be sent to Mr. Cushing. WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17411 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board; Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by the President on September 16, 1994.

The Board advises the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and functions as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) chairs the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Advisory Board will be held on 17 July, 2000 at the Crystal City Marriott Gateway Hotel, Arlington, VA from 2 p.m. to 5 p.m. The meeting will be open to the public.

For further information please contact Mr. Bill Isaacs telephone: 703–602–0815.

Dated: July 5, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17414 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on August 1, 2000, August 8, 2000, August 15, 2000, August 22, 2000, and August 29, 2000, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: July 5, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17413 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Department of Defense, Defense Contract Audit Agency.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Dale R. Collins, Chief, Human Resources Management, Defense Contract Audit Agency, Department of Defense, Ft. Belvoir, Virginia 22060–6219, 703–767–1236.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. Earl Newman, Assistant Director, Operations, Defense Contract Audit Agency, Chairperson.

Mr. Larry Uhlfelder, Assistant Director, Policy and Plans, Defense Contract Audit Agency, member.

Mr. Kirk Moberley, General Counsel, Defense Contract Audit Agency, member.

Regional Performance Review Board

Mr. Barbara Reilly, Regional Director, Mid-Atlantic, Defense Contract Audit Agency, Chairperson.

Mr. Frank Summers, Regional Director, Central, Defense Contract Audit Agency, member.

Mr. Robert Melby, Deputy Regional Director, Eastern, Defense Contract Audit Agency, member.

Dated: June 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–17412 Filed 7–10–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: An Electromagnetic Locomotion Platform for use ion simulated environments, A One-Step Resin Transfer Molding Process, and A Method of Tailoring Susceptors for Use in Induction Heating and Bonding systems.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Electromagnetic Locomotion Platform for Translation and Total Immersion of Humans into Virtual Environments.

Inventor: Jim Faughn.

Patent Number: 6,050,822.

Issued Date: April 18, 2000.

Title: One-Step Resin Transfer Molding of Multifunctional Composites Consisting of Multiple Resins.

Inventors: Bruce K. Fink, John Gillespie, Emanuele Gillio and Karl Bernetich.

Patent Number: 6,048,488.

Issued Date: April 11, 2000.

Title: Tailored Mesh Susceptors for Uniform Induction Heating, Curing and Bonding of Materials.

Inventors: Bruce K. Fink, John W. Gillespie, Jr. and Shridhar Yarlagadda.

Patent Number: 6,043,469.

Issued Date: March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17504 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

This patent covers a wide variety of technical arts including: A method for multi-sensor, multi-target tracking, An inverter which converts power from a single source into two widely different types of power outputs, and an optical amplifier that provides high brightness output.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/

or selling devices or processes covered by this patent.

Title: Method and Apparatus for Multi-Sensor, Multi-Target Tracking Using a Genetic Algorithm.

Inventor: David Hillis.

Patent Number: 6,055,523.

Issued Date: April 25, 2000.

Title: Tridirectional Inverter.

Inventor: Thomas F. Podlesak.

Patent Number: 6,052,292.

Issued Date: April 18, 2000.

Title: High Brightness Optical Parametric Amplifier Array.

Inventors: Suresh Chandra, Geraldine H. Daunt and Michael J. Ferry.

Patent Number: 6,052,218.

Issued Date: April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Norma Cammaratta, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Adelphi, MD 20783–1197 tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17505 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of a Novel Target Technology for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel target technology as described in the U.S. Patent #5,669,608; Device for Locating the Position of Impact of a Projectile; issued 23 September 1997; Thomson, et al. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17508 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive or Partially Exclusive License to Whithner Corporation

AGENCY: U.S. Army Research Laboratory, DoD.

ACTION: Notice of Intent.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to Whithner Corporation, a corporation having its principle place of business at 6300 Blair Hill Lane, Baltimore, MD 21209, an exclusive or partially exclusive license relative to a patented ARL technology (US Patent #5,669,608; Device for Locating the Position of Impact of a Projectile; issued 23 September 1997; Thomson, *et al.*). Anyone wishing to object to the granting of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 459, Aberdeen Proving Ground, Maryland 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17507 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) to the Central and Southern Florida Project (C&SF) Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas (WPA) Feasibility Study

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, intends to prepare a Supplemental Environmental Impact Statement to the C&SF Comprehensive Review Study Integrated Feasibility Report and Programmatic Environmental Impact Statement on the Water Preserve Areas Feasibility Study. the study is located in Palm Beach, Broward, and Miami-Dade Counties east of the Water Conservation Areas and generally west of existing developed areas. The study will investigate concepts to capture and store excess surface waters by backpumping water from the lower east coast urban areas that is normally discharged to tide via the C&SF Project canal system. The C&SF Comprehensive Review Study demonstrated that the Water Preserve Areas concept is an integral part of the Everglades restoration plan.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS can be answered by William Porter, Planning Division, U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, Florida 32232–0019, Telephone 904–232–2259, or Fax 904–232–3442.

SUPPLEMENTARY INFORMATION: a. *Project Features and Scope:* The WPAs feasibility study will evaluate the size, location, and operational aspects of the components of the Comprehensive Plan of the C&SF Project Comprehensive Review Study within the WPAs study boundary to provide for the optimum ecosystem restoration function. Other water-related needs and issues which will be addressed in the detailed engineering design of the WPAs include: water supply/use, water quality, seepage barriers, salt water intrusion, urban development impacts, and the presence of exotics in the proposed WPAs. This WPAs Feasibility Study will contain feasibility level analyses including General Design Memorandum level engineering and design. Some of the tasks associated with the preparation of this report will include surveys and mapping, geotechnical investigations, design optimization, economics, environmental analyses, and real estate analyses. A supplemental National Environmental Policy Act document will be prepared. A Project Management Plan has been prepared that details schedules, funding requirements, and identifies resource needs.

b. *Scoping:* The scoping process as outlined by the Council on Environmental Quality is being utilized to involve Federal, State, and local agencies, affected Indian Tribes, and other interested private organizations and parties. A Scoping Letter has been sent to interested Federal, State and local agencies, interested organizations and the public, to request their comments and concerns regarding issues they feel should be addressed in the SEIS. Interested persons and

organizations wishing to participate in the scoping process should contact the U.S. Army Corps of Engineers at the address above. Significant tissues anticipated include: flood protection and water supply for the project area; reduced drainage of the Everglades and reestablishing natural hydropatterns within existing natural areas, providing short hydroperiod wetlands to increase spatial extent, and providing a buffer between the Everglades and the increasingly urbanized lower east coast area. Public meetings held over the course of the study will be announced in public notices and local newspapers with exact locations, dates, and times.

c. It is estimated that the SEIS will be available to the public by summer 2001.

James C. Duck,

Chief, Planning Division.

[FR Doc. 00–17503 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Dam Safety Assurance Study, Tuttle Creek Lake Project, Manhattan, Kansas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The purpose of this study is to consider the economic, environmental, and social impacts that may occur as a result of various alternatives being considered in a dam safety assurance study, to consider embankment seismic remediation, under the authority of Section 1203 of the water Resources Development Act of 1986 (Pub. L. 99–662), Tuttle Creek Lake Project, Manhattan, Kansas.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed study and DEIS can be answered by the Project Manager, Mr. David L. Mathews, telephone number (816) 983–3696, Chief, Dam Safety and Support Section, Geotechnical Branch, U.S. Army Corps of Engineers, 700 Federal Building, 601 E. 12th Street, Kansas City, Missouri 64106–2896.

SUPPLEMENTARY INFORMATION: 1. The Kansas City District (KCD), Corps of Engineers, is undertaking a Dam Safety Assurance Study, to consider embankment seismic remediation measures, under the authority of Section 1203 of the Water Resources Development Act of 1986 (Pub. L. 99–662, for the Tuttle Creek Lake Project, Manhattan, Kansas.

2. KCD's study will evaluate the no-action alternative as well as various structural alternatives to determine:

a. Seismic remediation costs and benefits;

b. Regional social and economic impacts; and

c. Environmental impacts and mitigation measures.

3. Reasonable alternatives KCD will examine include the feasibility of various structural measures to address dam safety issues concerning seismic stability of the Tuttle Creek dam.

4. Scoping Process.

a. A public workshop will be held at Manhattan, Kansas in the Fall of 2000. The exact date, time, and location of the workshop will be announced when the details are finalized. Additional workshops will be held as the study progresses to keep the public informed. Coordination meetings will be held as needed with affected/concerned local, State, and Federal governmental entities.

b. These workshops and meetings, as well as any meetings which were previously held regarding this project, will serve as the collective scoping process for preparation of the DEIS. No formal ''scoping'' meeting will be held.

c. Draft documents forthcoming from the study will be distributed to Federal, State, and local agencies, as well as interested members of the general public, for review and comment.

d. Significant issues to be analyzed in depth include evaluations of:

(1) Dam safety;

(2) Impacts to fish and wild resources;

(3) Recreation;

(4) Navigation; and

(5) Water supply.

e. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as per regulations of the Council of Environmental Quality (Code of Federal Regulations, 40 CFR Parts 1500–1508), and other applicable laws, regulations, and guidelines.

5. The anticipated date of availability of the DEIS for public review is January 2002.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–17506 Filed 7–10–00; 8:45 am]

BILLING CODE 3710–KN–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–172–000, et al.]

CPV Gulfcoast, Ltd., et al.; Electric Rate and Corporate Regulation Filings

July 5, 2000.

Take notice that the following filings have been made with the Commission:

1. CPV Gulfcoast, Ltd.

[Docket No. EG00–172–000]

Take notice that on June 23, 2000, CPV Gulfcoast, Ltd., c/o Competitive Power Ventures, L.P., 4061 Power Mill Road, Suite 700, Calverton, MD 20705, filed with the Federal Energy Regulatory Commission (Commission) an amendment to the June 15, 2000 application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The amendment identified the following informational changes: (i) CPV Gulfcoast, Ltd. is the name of the Applicant rather than CPV Gulfcoast, L.P. and (ii) that the nominally rated 250 MW natural gas fired combined cycle generating facility will consist of one (1) F class combustion turbine, one (1) heat recovery steam generator and a single steam turbine.

Comment date: July 26, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

2. Southern Company Services, Inc.

[Docket No. ER00–2998–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Purchased Power Agreement between Georgia Power and LG&E Energy Marketing, Inc. (LEM) dated October 6, 1999 (the Agreement) pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to LEM commencing on June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket No. ER00–2999–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Purchased Power Agreement between Georgia Power and LG&E Energy Marketing, Inc. (LEM) dated November 24, 1998 (the Agreement), the Letter Agreement between LEM and Georgia Power, dated as of June 20, 2000 (Letter Agreement), and the Letter Agreement between LEM and Georgia Power, dated as of June 26, 2000 (Second Letter Agreement), pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to LEM commencing on June 1, 2000. The Letter Agreement and the Second Letter Agreement accelerate the commencement dates for the delivery of portions of capacity and associated energy under the Agreement.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Company Services, Inc.

[Docket No. ER00–3000–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Purchased Power Agreement between Georgia Power and Dynegy Power Marketing, Inc. (Dynegy) dated March 2, 2000 (the Agreement) pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to Dynegy commencing on June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER00–3001–000]

Take notice that on June 30, 2000, Southern Company Services, Inc., as agent for Georgia Power Company (Georgia Power), tendered for filing the Power Purchase Agreement between Georgia Power and Alabama Electric Cooperative, Inc. (AEC) dated May 5, 2000 (the Agreement) pursuant to the Commission's authorization for Georgia Power to sell power at market rates under the Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 4 (Supersedes Original Volume No. 4). The Agreement provides the general terms and conditions for capacity and associated energy sales from Georgia Power to AEC commencing on June 1, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Conectiv

[Docket No. ER00–3002–000]

Take notice that on June 30, 2000, Conectiv tendered for filing under Section 205 of the Federal Power Act four Interconnection Agreements between Conectiv and NRG Energy, Inc. The Interconnection Agreements set forth the terms for the interconnection of four wholly-owned generating stations being acquired by NRG Energy, Inc. from Conectiv in association with Conectiv's restructuring efforts.

A copy of the filing was served on the Delaware Public Service Commission, the Maryland Public Service Commission, the New Jersey Board of Public Utilities, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, PJM Interconnection, LLC, and NRG Energy, Inc.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ameren Services Company

[Docket No. ER00–3003–000]

Take notice that on June 30, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Service between ASC and Illinois Municipal Electric Agency (IMEA). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to IMEA pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–3004–000]

Take notice that on June 30, 2000, Virginia Electric and Power Company (Virginia Power or the Company), tendered for filing the following unexecuted Service Agreements with Sempra Energy Trading Corporation (Transmission Customer):

1. Unexecuted Second Amended Service Agreement for Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, First Revised Volume No. 5;

2. Unexecuted Second Amended Service Agreement for Non-Firm Point-to-Point Transmission Service designated Second Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Original Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. The Company requests an effective date of June 1, 2000, the date service was first provided to the customer under the amended agreements.

Copies of the filing were served upon Sempra Energy Trading Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. TXU Electric Company

[Docket No. ER00–3005–000]

Take notice that, on June 30, 2000, TXU Electric Company (TXU Electric) tendered for filing an executed transmission service agreement (TSA) with Engage Energy U.S., L.P. for certain Planned and Unplanned Service transactions under TXU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TXU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA. Accordingly, TXU Electric seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Engage Energy U.S., L.P. as well as the Public Utility Commission of Texas.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER00–3006–000]

Take notice that on June 30, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the

Service Agreement for Network Integration Transmission Service for PP&L Inc. (now PPL Electric Utilities Corporation) (PPL) so as to reflect that, commencing June 1, 2000, the load of the Borough of Goldsboro, Pennsylvania (Goldsboro) will be served by PPL rather than GPU.

Copies of this filing were served upon PPL, GPU, Goldsboro, and the Pennsylvania Public Utility Commission.

PJM requests an effective date of June 1, 2000, for the amendments to the service agreements.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER00–3007–000]

Take notice that on June 30, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Gas Recovery Systems, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Gas Recovery Systems, Inc. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective June 12, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. The Montana Power Company

[Docket No. ER00–3008–000]

Take notice that on June 30, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement PPL EnergyPlus, LLC (PPL) (Open Access Transmission Tariff).

A copy of the filing was served upon PPL Energy Plus, LLC.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–3009–000]

Take notice that on June 30, 2000, Virginia Electric and Power Company tendered for filing amendments to its Open Access Transmission Tariff (OATT) to enhance the ability of customers whose loads are less than 1 MW in any or all hours to schedule transmission service under the Company's OATT.

Virginia Power requests an effective date of September 1, 2000.

The filing has been served on Virginia Power's current OATT customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Company

[Docket No. ER00–3010–000]

Take notice that on June 30, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing British Columbia Power Exchange Corporation and Pepco Energy Services as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon establishing British Columbia Power Exchange Corporation and Pepco Energy Services and the Public Utilities Commission of Ohio.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. The Detroit Edison Company

[Docket No. ER00–3011–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreements) for Short-term Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Nordic Electric, dated as of April 20, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 19, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The Detroit Edison Company

[Docket No. ER00–3012–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (the Service Agreement) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access and Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Williams Energy Marketing and Trading Company, dated as of April 27, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 26, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. The Detroit Edison Company

[Docket No. ER00–3013–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreements) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access and Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Aquila Energy Marketing Corporation, dated as of April 27, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 26, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER00–3014–000]

Take notice that on June 30, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing three Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Reliant Energy Services, Inc. (Reliant). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to Reliant pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER00–3015–000]

Take notice that on June 30, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for

acceptance materials to permit NEPOOL to expand its membership to include The Cape Light Compact and J.F.Gray & Associates, LLC (collectively, the Applicants).

The Participants Committee requests an effective date of July 1, 2000 for commencement of participation in NEPOOL by Applicants.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER00–3016–000]

Take notice that on June 30, 2000, Ameren Services Company (Ameren Services), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and Illinois Municipal Electric Agency (IMEA). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to IMEA pursuant to Ameren's Open Access Tariff.

ASC requests that the Network Service Agreement and Network Operating Agreement be allowed to become effective June 1, 2000 as indicated in its term.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER00–3017–000]

Take notice that on June 30, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Wind Utility Consulting.

NSP requests that the Commission accept the Agreement effective June 15, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Central Illinois Light Company

[Docket No. ER00–3018–000]

Take notice that on June 30, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Legacy Energy Group.

CILCO requested an effective date of June 13, 2000 for the service agreements.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Avista Corporation

[Docket No. ER00–3019–000]

Take notice that on June 30, 2000, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commissions, 18 CFR Part 35.12, an executed Mutual Netting Agreement with Puget Sound Energy, Inc., effective June 1, 2000.

Notice of the filing has been served upon Puget Sound Energy, Inc.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Southern California Edison Company

[Docket No. ER00–3020–000]

Take notice that on June 30, 2000, Southern California Edison Company (SCE), tendered for filing the Harborgen Substation Service Agreement No. 2 (Agreement) between SCE and Harbor Cogeneration Company (Harbor).

The Agreement specifies the terms and conditions under which SCE will interconnect Harbor's 80,000 kW generating facility with SCE's Harborgen Substation pursuant to SCE's Transmission Owners Tariff.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Pool

[Docket No. ER00–3021–000]

Take notice that on June 30, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance materials to terminate the membership of MetroMedia Energy, Inc. (MME).

At the request of MME, the Participants Committee seeks a June 1, 2000 effective date for that termination.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. The Detroit Edison Company

[Docket No. ER00–3022–000]

Take notice that on June 30, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (Service Agreement) for Short-term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access and Joint Open Access Transmission Tariffs of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Power Exchange Corporation, dated as of April 27, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 26, 2000.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. American Electric Power Service Corporation

[Docket No. ER00–3023–000]

Take notice that on June 30, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Firm Point-to-Point Transmission Service Agreement for Duquesne Light Company and Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreement with the Michigan Companies (Consumers Energy and The Detroit Edison Company). All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after June 1, 2000.

Pursuant to a request by PP&L, Inc., the Firm and Non-firm Point-to-Point Transmission Service Agreements No. 159 and 95, under AEP Companies' FERC Electric Tariff Original Volume No. 4, are being assigned to PPL

EnergyPlus, LLC. The AEP Companies' FERC Electric Tariff Original Volume No. 4 is superceded by the OATT.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Aquila Energy Marketing Corporation

[Docket No. ER00–3024–000]

Take notice that on June 30, 2000, Aquila Energy Marketing Corporation (AEMC), tendered for filing a Contingent Call Option between AEMC and UtiliCorp United Inc. (d/b/a Missouri Public Service) dated June 30, 2000.

AEMC requests that the Contingent Call Option be made effective July 1, 2000.

Comment date: July 21 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Ameren Energy Marketing Company and Central Illinois Public Service Company d/b/a AmerenCIPS

[Docket No. ER00–3025–000]

Take notice that on June 30, 2000, Ameren Energy Marketing Company (AEM) and Central Illinois Public Service Company d/b/a AmerenCIPS (AmerenCIPS), tendered for filing a Voluntary Curtailment Agreement under which AmerenCIPS shall voluntary reduce its load upon notice from AEM requesting voluntary reduction in AmerenCIPS load.

Copies of this filing were served upon Illinois Commerce Commission.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Southwestern Electric Power Company

[Docket No. ER00–3026–000]

Take notice that on June 30, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing Amendment No. 3 to the Power Supply Agreement, dated February 10, 1993, as amended, between SWEPCO and East Texas Electric Cooperative, Inc., (ETEC).

SWEPCO states that a copy of the filing has been served on ETEC and on the Public Utility Commission of Texas.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Southwestern Electric Power Company

[Docket No. ER00–3027–000]

Take notice that on June 30, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing Amendment No. 2 to the Amended and Restated Power Supply Agreement, dated June 30, 1997, as amended, between SWEPCO and Northeast Texas Electric Cooperative, Inc., (NTEC).

SWEPCO states that a copy of the filing has been served on NTEC and on the Public Utility Commission of Texas.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. PPL Electric Utilities Corporation

[Docket No. ER00–3028–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the 115 kV Seward-Conemaugh Interconnection Facilities Agreement (Pennsylvania Electric Company Rate Schedule FERC No. 63).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. PPL Electric Utilities Corporation

[Docket No. ER00–3029–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Conemaugh Operating Agreement (GPU Operating Companies Rate Schedule FERC No. 100).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. PPL Electric Utilities Corporation

[Docket No. ER00–3030–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Conemaugh Interconnection Agreement (PPL Utilities Rate Schedule FERC No. 168).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. PPL Electric Utilities Corporation

[Docket No. ER00–3031–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Keystone Interconnection Agreement (Pennsylvania Electric Company d/b/a/ GPU Energy Rate Schedule FERC No. 115).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. PPL Electric Utilities Corporation

[Docket No. ER00–3032–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption Agreement, PPL Utilities will assign to PPL Montour, LLC its rights and obligations under the Keystone Operating Agreement (GPU Operating Companies Rate Schedule FERC No. 99).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. PPL Electric Utilities Corporation

[Docket No. ER00–3033–000]

Take notice that on June 30, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission that pursuant to an Assignment and Assumption of Power Sales Agreement dated June 26, 2000, between Baltimore Gas and Electric Company (BGE) and Constellation Power Source Generation, Inc. (CPSG), BGE will assign to its affiliate CPSG its interest in a Capacity and Energy Sales Agreement between PPL Utilities and BGE (PPL Rate Schedule FERC No. 92).

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. PPL Montour, LLC

[Docket No. ER00–3034–000]

Take notice that on June 30, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Commission notice that PPL Electric Utilities Corporation (PPL Utilities) will assign its rights and obligations under the Assignment and Assumption

Agreement, dated November 24, 1999, between the Conemaugh Generating Station Owners and Sithe Power Marketing, L.P.

PPL Montour has served a copy of this filing on the Conemaugh Generating Owners, Sithe Power Marketing, L.P. and PPL Utilities.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Commonwealth Edison Company; Commonwealth Edison Company of Indiana

[Docket No. ER00–3035–000]

Take notice that on June 30, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing an amendment to ComEd's Open Access Transmission Tariff (OATT) to offer new redispatch options to its Transmission Customers. ComEd is also revising Schedule 9 of its OATT, which sets forth how Transmission Customers shall compensate ComEd for redispatch, and updating the Market Redispatch option of Attachment J to its OATT to reflect changes submitted by the North America Electric Reliability Council and adopted by the Commission in Docket No. ER00–2077–000.

ComEd requests an effective date of August 29, 2000.

Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. PPL Montour, LLC

[Docket No. ER00–3036–000]

Take notice that on June 30, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Commission notice that PPL Electric Utilities Corporation (PPL Utilities) will assign its rights and obligations under the Assignment and Assumption Agreement, dated November 24, 1999, between the Keystone Generating Station Owners and Sithe Power Marketing, L.P.

PPL Montour has served a copy of this filing on the Keystone Generating Owners, Sithe Power Marketing, L.P. and PPL Utilities.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. PPL Montour, LLC

[Docket No. ER00–3037–000]

Take notice that on June 30, 2000, PPL Montour, LLC (PPL Montour), tendered for filing with the Commission notice that PPL Electric Utilities Corporation (PPL Utilities) will assign its rights and obligations under the Energy Service Agreement among the Conemaugh Generating Station Owners and Sithe Power Marketing, L.P., dated November 24, 1999, and filed the Energy Service Agreement.

PPL Montour has served a copy of this filing on the Conemaugh Generating Owners, Sithe Power Marketing, L.P. and PPL Utilities.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

42. Exeter Energy Limited Partnership

[Docket No. ER00–3039–000]

Take notice that on June 30, 2000, Exeter Energy Limited Partnership. (Exeter) tendered for filing pursuant to Rule 205, 18 CFR 385.205, petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

EXETER intends to engage in electric power and energy purchases and sales. In transactions where EXETER sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in EXETER's petition, EXETER is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy Company.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

43. Pennsylvania Electric Company

[Docket No ER00–3040–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing a Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Keystone Generating Station Operating Agreement (Agreement), Penelec Rate Schedule No. 99, as part of BGE's restructuring.

The effective date of the Agreement is the date BGE's ownership interest in the Keystone Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

44. Pennsylvania Electric Company

[Docket No. ER00–3041–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing a Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the 115 kV Seward-Conemaugh Interconnection Facilities Agreement, Pennsylvania Electric Company Rate Schedule FERC No. 63.

The effective date of the assignment is the date BGE's ownership interest in the Conemaugh Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

45. Constellation Power Source Generation, Inc.

[Docket No ER00–3042–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing (1) a November 24, 1999 Assignment and Assumption Agreement (November Agreement) among the public utility owners of the Keystone Generating Station; and (2) a June 26, 2000 Assignment and Assumption agreement by and between Baltimore Gas and Electric Company (BGE) and CPSG (June Agreement). Pursuant to the June Agreement, BGE will, in conjunction with its restructuring, assign its interest in the November Agreement to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

46. Pennsylvania Electric Company

[Docket No ER00–3043–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Conemaugh Generating Station Operating Agreement (Agreement), Penelec Rate Schedule No. 100, as part of BGE's restructuring.

The effective date of the Agreement is the date BGE's ownership interest in the Conemaugh Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

47. Safe Harbor Water Power Corporation

[Docket No ER00–3044–000]

Take notice that on June 30, 2000, Constellation Power Source Generation,

Inc. (CPSG) on behalf of Safe Harbor Water Power Corporation (Safe Harbor) and PPL Electric Utilities Corporation (PPL Utilities) tendered for filing (a) an Assignment and Assumption of the Safe Harbor Contract, by and between Baltimore Gas and Electric Company (BGE) and CPSG (BGE Agreement); and (b) an Assignment and Assumption of the Safe Harbor Contract, by and between PPL Utilities and PPL Holtwood, LLC (PPL Agreement). Pursuant to the BGE Agreement, BGE will assign its interest as purchaser under the Safe Harbor Contract (Safe Harbor Water Power Corporation Rate Schedule FERC No. 7), to its affiliate CPSG. Pursuant to the PPL Agreement, PPL Utilities will assign its interest as purchaser under the Safe Harbor Contract to PPL Holtwood, LLC.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

48. Pennsylvania Electric Company

[Docket No ER00–3045–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Keystone Generating Station Interconnection Agreement (Agreement), dated June 26, 2000, Penelec Rate Schedule FERC No. 115.

The effective date of the assignment is the date BGE's ownership interest in the Keystone Generating Plant is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

49. Pennsylvania Electric Company

[Docket No ER00–3046–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pursuant to which it will replace its affiliate Baltimore Gas and Electric Company (BGE) under the Conemaugh Generating Station Operating Agreement (Agreement), Penelec Rate Schedule No. 100, as part of BGE's restructuring.

The effective date of the Agreement is the date BGE's ownership interest in the Conemaugh Generating Station is transferred from BGE to CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

50. Constellation Power Source Generation, Inc.

[Docket No. ER00–3047–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pertaining to two assignments. The assignments relate to the Keystone Interconnection Agreement, Penelec Rate Schedule FERC No. 115.

The effective date of the assignments is the date Baltimore Gas and Electric Company's (BGE) ownership interest in the Keystone Generating Station is transferred from BGE to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

51. Constellation Power Source Generation, Inc.

[Docket No ER00–3048–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG) tendered for filing (1) A November 24, 1999 Assignment and Assumption Agreement (November Agreement) among the public utility owners of the Conemaugh Generating Station; and (2) a June 26, 2000 Assignment and Assumption agreement by and between Baltimore Gas and Electric Company (BGE) and CPSG (June Agreement). Pursuant to the June Agreement, BGE will, in conjunction with its restructuring, assign its interest in the November Agreement to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

52. Constellation Power Source Generation, Inc.

[Docket No. ER00–3049–000]

Take notice that on June 30, 2000, Constellation Power Source Generation, Inc. (CPSG), tendered for filing Notice of Assignment pertaining to two assignments. The assignments relate to the Conemaugh Interconnection Agreement, Penelec Rate Schedule FERC No. 115.

The effective date of the assignments is the date Baltimore Gas and Electric Company's (BGE) ownership interest in the Conemaugh Generating Station is transferred from BGE to its affiliate CPSG.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

53. Panda Oneta Power, L.P.

[Docket No. ER00–3050–000]

Take notice that on June 30, 2000, Panda Oneta Power, L.P. (Panda Oneta), 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing in Docket No. ER00–1982 pursuant to 18 CFR 35.13 and 131.53 of the Federal Energy Regulatory Commission's Rules and Regulations, Notice of Cancellation effective July 1, 2000.

Panda Oneta states that it has never entered into any wholesale electric power or energy transactions, and has never utilized its Electric Rate Schedule FERC No. 1.

Comment date: July 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–17425 Filed 7–10–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–007]

Dominion Transmission Inc. (Formerly CNG Transmission Corporation; Notice of Negotiated Rate Filing

July 5, 2000.

Take notice that on June 29, 2000, Dominion Transmission, Inc. (DTI) (formerly CNG Transmission Corporation) tendered for filing the following tariff sheets for disclosure of a recently negotiated rate transaction:

Original Sheet No. 39B

DTI requests an effective date of July 1, 2000, for the negotiated rate.

DTI states that copies of the filing have been served on all parties on the official service list, DTI's 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. 00–17426 Filed 7–10–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6733–1]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Registration of Fuels and Fuel Additives (EPA ICR Number 309.10, OMB Control Number 2060–0150, expiration date: 6–30–00). 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 September 11, 2000.

ADDRESSES: Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. A paper or electronic copy of the draft ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those who (1) manufacture or import gasoline or diesel fuel for use in motor vehicles, or (2) manufacture or import an additive for gasoline or diesel fuel for use in motor vehicles.

Title: Registration of Fuels and Fuel Additives: Requirements for Manufacturers (40 CFR 79), EPA ICR Number 309.10, OMB Control Number 2060–0150, expiration date: 6–30–00.

Abstract: In accordance with the regulations at 40 CFR 79, Subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline or diesel fuel for use in motor vehicles, and manufacturers (including importers) of additives for such gasoline or diesel fuel, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, certain technical and marketing information, and any health-effects information in possession of the manufacturer. The development of heath-effects data, as required by 40 CFR part 79, Subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that gasoline additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. The Mine Safety and Health Administration of the Department of Labor restricts the use of diesel additives in underground coal mines to those registered by EPA. Most of the information is confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed at 40 CFR Part 9 and 48 CFR Chapter 15.

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: There are approximately 120 fuel manufacturers, 660 additive manufacturers, 600 registered fuels, and 5600 registered additives. For each additive that is not a relable of a registered additive, about 4000 additives, an annual report is required, at an estimated burden of one hour and cost of $58. For each fuel, quarterly and annual reports are required, at an estimated burden of three hours and $173 for each. EPA estimates that there will be 500 new additives registered each year, with a reporting burden of eight hours and $500 each. EPA estimates that there will be 500 additive update letters each year, with a burden of one hour and $54 each. EPA estimates that there will be 50 new gasoline and diesel fuels registered each year, with a burden of eight hours and $500 each. EPA estimates that there will be 600 fuel update letters each year, with a burden of one hour and $54 each. There are no capital and start-up costs. There are no operation and maintenance costs beyond copying and postage. The total annual estimated burden for industry is 18,500 hours and $1 million. 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: June 22, 2000.

Merrylin Zaw-Mon,

Director, Transportation and Regional Programs Division.

[FR Doc. 00–17490 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6732–1]

Notice of Availability and Request for Comment on Draft Plan of Action for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Public Comment.

SUMMARY: The Environmental Protection Agency (EPA), on behalf of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (Task Force), invites public comments on the draft Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico (Action Plan) as required by section 604(b) of Public Law 105–383, the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, Title VI, enacted on November 13, 1998. The Task Force is comprised of senior policymakers from eight Federal agencies, nine States, and two Tribal governments. The Action Plan is the result of several years of study and discussion by the members of the Task Force and many interested officials and citizens who participated in their deliberations.

DATES: Comments must be received by September 11, 2000. All comments received during the formal comment period will be reviewed and delivered to the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force for their consideration prior to the development of the final Action Plan. Late comments will be considered as time allows. Submission of comments prior to the end of the comment period is highly encouraged.

ADDRESSES: Submit written comments to: Mississippi River/Gulf of Mexico Action Plan (4503F), c/o U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. For information on electronic filing of comments, see ''Additional Comment Information'' in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. John Wilson, U.S. EPA, Assessment and Watershed Protection Division (AWPD) (4503F), 1200 Pennsylvania Avenue NW, Washington, D.C. 20460, telephone (202) 260–7878; Internet: wilson.john@epa.gov. The draft Action Plan below, as well as related information, may be reached via the EPA website: at <http://www.epa.gov/msbasin/>.

SUPPLEMENTARY INFORMATION:

Additional Comment Information: Comments may also be submitted electronically. Comments should be sent to the following Internet address: ms-river@epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form on encryption.

The Task Force first met on December 4, 1997 and has had five meetings since that time in various locations within the Mississippi/Atchafalaya river basin. At its November 18, 1999 meeting in Chicago, IL, the Task Force expressed general support for a previous draft of this Action Plan, but requested staff development of additional information on quantitative goals for the reduction of hypoxia in the Gulf of Mexico. At its June 15 and 16 meeting in St. Louis, MO, the Task Force had a spirited discussion about alternative goals and directed that several alternatives be published for public comment. Accordingly, the Task Force is particularly interested in comment on the following:

1. Which of the ''Coastal Goals'' should be in the final Action Plan, and if not any of these, please suggest alternatives? Are the ''Within Basin'' and ''Quality of Life'' Goals appropriate or how should they be modified?;

2. Are the Implementation Actions listed and the dates associated with them appropriate?;

3. Provide examples of any effective nutrient management State/Tribal program successes or challenges which can be highlighted in the final Action Plan; and

4. Are the listings of Federal programs in the section ''Funding the National Effort'' complete?

Draft Action Plan for Reducing, Mitigating, and Controlling Hypoxia in the Northern Gulf of Mexico

Purpose and Background
Background on the Issue
Long-Term Goals
Implementation Actions
Key Roles and Responsibilities
The Framework and Approach for Reducing Hypoxia in the Gulf of Mexico
Adaptive Management: Action, Monitoring, and Research
Funding the National Effort: Clean Rivers/Clean Gulf Budget Initiative
Indicators of Success/Progress

Purpose and Background

This Action Plan describes a national strategy to reduce the frequency, duration, size and degree of oxygen depletion of the hypoxic zone of the northern Gulf of Mexico (the Gulf). The Plan is the result of several years of study and discussion by the members of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force (the Task Force) and many concerned officials and citizens who participated in their deliberations. This Plan is submitted in accordance with The Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, Title VI of P.L. 105–383, section 604(b), enacted on November 13, 1998.

This Action Plan is informed by the findings of the Committee on Environment and Natural Resources (CENR) Integrated Assessment of Hypoxia in the Northern Gulf of Mexico along with many comments submitted about it and the six topic reports on which it is based. In addition, the Task Force considered several other significant reports, including the Gulf of Mexico Hypoxia: Land and Sea Interactions (Council for Agricultural Science and Technology, 1999), The Role of the Mississippi River in Gulf of Mexico Hypoxia (University of Alabama-Carey et al. 1999; for the Fertilizer Institute), and Clean Coastal Waters: Understanding and Reducing the Effects of Nutrient Pollution (Committee on the Causes and Management of Eutrophication, National Research Council, 2000). The Task Force members also drew on their many years of experience in agricultural and environmental policy in formulating this Action Plan. The Task Force also listened carefully to dozens of statements by members of the public during its six public meetings.

Improved coordination and, in most cases, expansion of the excellent private and government supported efforts to reduce losses of nutrients are central to the success of this strategy. Throughout the basin much work is underway to increase the efficiency of farming practices and restore wetlands and riparian buffers. In addition, industry and local governments are beginning to undertake additional efforts to reduce

nutrient loadings from point sources and urban runoff. Implementation, and expansion, of those efforts will continue to deliver improvements to water quality throughout the basin and in the Gulf.

The work of the Task Force has provided a basin wide context for the continued pursuit of both incentive-based, voluntary efforts for nonpoint sources and regulatory controls for point sources. Furthermore, research and monitoring that supports the proposed remedies and goals in this plan, as well as resolution of uncertainties identified in the CENR Integrated Assessment and elsewhere, are identified as priorities for future action.

The Action Plan proposes an implementation approach to carry out an initial set of ten priority actions and, subsequently, make adjustments to that initial approach as we evaluate results. This plan describes an adaptive approach, based on implementation, monitoring and research to address known problems, clarify scientific uncertainties, and evaluate the effectiveness of efforts to reduce hypoxia. Because of the importance of enhancing these efforts by increasing support for necessary incentives, monitoring and research, this plan also identifies additional resource needs.

Background on the Issue

Scientific investigations document a zone on the Gulf of Mexico's Texas-Louisiana Shelf with seasonally low oxygen levels (<2mg/l). Between 1993 and 1999 the zone of mid-summer bottom-water hypoxia in the northern Gulf of Mexico has been estimated to be larger than 4,000 square miles. In 1999, it was 8,000 square miles, about the size of the State of New Jersey. The hypoxic zone is a result of complicated interactions involving excessive nutrients, primarily nitrogen, carried to the Gulf by the Mississippi and Atchafalaya Rivers; physical changes in the basin, such as channelization and loss of natural wetlands and vegetation along the banks as well as wetland conversions throughout the basin; and the stratification in the waters of the northern Gulf caused by the interaction of fresh river water and the saltwater of the Gulf.

Nutrients, such as nitrogen and phosphorus, are essential for healthy marine and freshwater environments. However, an overabundance can trigger excessive algal growth (or eutrophication) which can result in several possible ecosystem responses. In the near shore Gulf, excessive algal growth, driven by excess nitrogen, results primarily in a decrease in dissolved oxygen in the bottom water, and the corresponding loss of aquatic (water column and benthic) habitat. Mobile organisms leave the hypoxic zone and those that cannot leave, die or are weakened depending on how low the oxygen level gets and for how long. In the Gulf, fish, shrimp, crabs, zooplankton, and other important fish prey are significantly less abundant in bottom waters in areas that experience bottom waters hypoxia.

Additionally, water quality throughout the Mississippi and Atchafalaya River basin (the Basin) has been degraded by excess nutrients. Most States in the Basin have significant river miles impaired by high nutrient concentrations, primarily phosphorous, meaning that they are not fully supporting aquatic life uses. In some areas groundwater supplies are threatened by excess nitrate, which can be a human health hazard.

A significant portion of the nutrients entering the Gulf from the Mississippi River come from human activities: discharges from sewage treatment and industrial wastewater treatment plants and stormwater runoff from city streets and farms. Nutrients from automobile exhaust and fossil fueled power plants also enter the waterways and the Gulf through air deposition to the vast land area drained by the Mississippi River and its tributaries. About 90% of the nitrate load to the Gulf comes from non-point sources. About 56% of the load enters the Mississippi River above the Ohio River. The Ohio basin adds 34%. High nitrogen loads come from basins receiving wastewater discharges and draining agricultural lands in Iowa, Illinois, Indiana, southern Minnesota, and Ohio.

The primary approaches to reduce hypoxia in the Gulf of Mexico appear to be to: 1) reduce nitrogen loads from watersheds to streams and rivers in the Basin and 2) restore and enhance denitrification and nitrogen retention within the Basin. Current model simulations suggest that a 40% reduction in total nitrogen flux to the Gulf is necessary to return to average loads comparable to those during 1955–70. Model simulations further suggest that, short of the 40% reduction necessary to return to levels in the past mid-century, nutrient load reductions of about 20–30% would result in a 15–50% increase in bottom water dissolved oxygen concentrations. Because any oxygen increase above the 2 mg/l threshold will have a significant positive effects on marine life, even small reductions in nitrogen loads are desirable. While the primary focus of this strategy is on reducing nitrogen loads to the northern Gulf, many of the actions proposed through this plan will also achieve basin-wide improvements in surface-water quality, by reducing phosphorous as well. Likewise, actions taken to address local water quality problems in the basin will frequently also contribute to reductions in nitrogen loadings to the Gulf.

Long-Term Goals

The goals of this strategy are three-fold:

(1) *Coastal Goal*—This goal will be re-evaluated every five years to take into account advances in information and the feasibility in attaining the goal based on progress in implementing this Action Plan.

(Note to commentors: Three options for the coastal goal are listed to specifically solicit public comments on the choices between different quantitative and qualitative alternatives)

1.A—to reduce, by 2010, annual discharges of nitrogen to the Gulf from the Mississippi/Atchafalaya Rivers by 350,000 to 650,000 metric tons—equivalent to a 20 to 40% reduction in the annual average loading during the period 1980–1996. This reduction should be pursued through a combination of actions to curb direct discharges of nitrogen bearing domestic and industrial wastewater, to reduce losses of excess nutrients from agricultural operations, and by intercepting and processing nutrients in riparian buffers and constructed or restored wetlands.

1.B—to reduce the 5-year running average areal extent of Gulf of Mexico hypoxia to less than 5,000 square kilometers by the year 2010. The best current science says that to make significant progress toward that goal, average nitrogen loads to the Gulf should be reduced by 30% from the 1980–96 average. Identification of specific actions within the basin, to achieve that 30% nitrogen load reduction, should be developed through the implementation actions outlined in this Action Plan.

1.C—to pursue practical, cost-effective efforts by all states and tribes within the basin and all categories of sources to protect the ecological and fisheries resources of the northern Gulf of Mexico by reducing nutrient over-enrichment.

(2) *Within Basin Goal*—to restore and protect the waters of the 31 States and tribal lands within the Mississippi/Atchafalaya River Basin and their aquatic ecosystems in order to protect public health and aquatic life, as well as reduce negative impacts on downstream waters.

(3) *Quality of Life Goal*—to improve the communities and economic conditions across the Mississippi/Atchafalaya River Basin, in particular the agriculture, fisheries and recreation sectors, through improved public and private land management and a cooperative, incentive based approach.

Implementation Actions

The guiding principle of this plan is that in establishing priorities for watershed restoration, States, Tribes, and Federal Agencies within the Mississippi and Atchafalaya River Basin consider the potential for benefits to the Gulf of Mexico, direct current and increased resources to cost-effective, practical, actions that will reduce discharges and run-off of nutrients in the Mississippi and Atchafalaya River Basin, and give priority to watersheds delivering the most nitrogen to the Gulf as well as being likely to have local benefits.

This Action Plan assumes continuation of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force with invitations for participation by additional States and Tribes in the Basin. The Plan also assumes that Federal, State, and Tribal governments will provide involved agencies with any new authorities needed to implement proposed actions and with additional appropriations needed to accomplish tasks not presently funded within agency budgets. The Task Force will serve as the national forum to encourage and coordinate implementation, including assessments, research, monitoring and modeling, and also adaptive management, including evaluation of progress, updates of goals and strategies and solicitation of continued financial support, to achieve the goals described above.

The following short term actions and time-frames are proposed to achieve long-term goals outlined above:

#1 By Summer, 2001: the Task Force will establish sub-basin committees to coordinate implementation of the Action Plan by major sub-basin, including coordination among smaller watersheds and States in each of those sub-basins;

#2 By Fall, 2001, States, Tribes and Federal Agencies within the Mississippi and Atchafalaya River Basin, using available data and tools, will develop strategies for nutrient reduction in the sub-basins with greatest contributions to Gulf hypoxia. These strategies will include setting reduction targets in metric tons of nitrogen, establishing a baseline of existing efforts for nutrient management, identifying opportunities to restore flood plain wetlands (including restoration of river inflows) along and adjacent to the Mississippi River, detailing needs for additional assistance to meet their goals, and promoting additional funding;

#3 By Fall, 2001, Clean Water Act permitting authorities within the Mississippi and Atchafalaya River Basin will identify point source dischargers with significant discharges of nutrients and undertake steps to reduce those loadings, consistent with action 2, above;

#4 By Spring 2002, States and Tribes within the Mississippi and Atchafalaya River Basin with support from Federal agencies, will increase assistance to landowners for voluntary actions to restore, enhance, or create wetlands and vegetative or forested buffers along rivers and streams within priority watersheds consistent with action 2, above;

#5 By Fall 2002, States and Tribes within the Mississippi and Atchafalaya River Basin, with support from Federal agencies, will increase assistance to agricultural producers, other landowners, and businesses for the voluntary implementation of best management practices (BMPs), which are effective in addressing loss of nitrogen to waterbodies, consistent with action 2, above;

#6 By Fall, 2001, The Task Force will propose an integrated Gulf of Mexico Hypoxia Research Strategy to coordinate and promoting funding for necessary research and modeling efforts to reduce uncertainties regarding the sources, effects (including economic effects in the Gulf as well as the basin), and geochemical processes for hypoxia in the Gulf;

#7 By Spring, 2002, Coastal States, Tribes and relevant Federal Agencies will greatly expand the long-term monitoring program for the hypoxic zone, including greater temporal and spatial data collection, measurements of macro-nutrient and micro-nutrient concentrations and hypoxia as well as measures of the biochemical processes that regulate the inputs, fate, and distribution of nutrients and organic material;

#8 By Spring 2002, States, Tribes and Federal Agencies within the Mississippi and Atchafalaya River Basin will expand the existing monitoring efforts within the Basin to provide both a coarse resolution assessment of the nutrient contribution of various sub-basins and a high resolution modeling technique in these smaller watersheds to identify additional management actions to help mitigate nitrogen losses to the Gulf, and phosphorous loadings to local waters, based on the interim guidance established by the National Water Quality Monitoring Council; and,

#9 By Fall 2003, The U.S. Army Corps of Engineers (COE), in cooperation with States, Tribes and other Federal Agencies, will, when authorized and funded by the Congress, complete a reconnaissance level assessment of potential nutrient reduction actions that could be achieved by modifying COE projects or project operations.

#10 By Fall 2005 and every five years thereafter, the Task Force will assess the nutrient load reductions achieved and the response of the hypoxic zone, water quality throughout the Basin, and economic and social effects. Based on this assessment, the Task Force will determine appropriate actions to continue to implement this strategy or, if necessary, revise the strategy.

Key Roles and Responsibilities

These implementation actions will require contributions and collaboration from many different individuals and organizations. Briefly, some of the most important roles and responsibilities include:

Private Citizens and Businesses

- Landowners (homeowners and renters, farmers, ranchers), businesses and business owners can significantly reduce the impacts of their activities on water quality when provided with information about environmental problems, practical and cost-effective solutions, technical assistance, and, where necessary, financial assistance. Under this strategy, Federal, State, Tribal and local agencies will use education, assistance and other incentives to encourage broader and more effective use of pollution prevention techniques, BMPs and participation in restoration programs by landowners, businesses and households.

States and Tribes

- States and Tribes have important water quality protection responsibilities under their own laws and as key implementors or partners in programs established pursuant to Federal legislation. Specifically, States and Tribes will assess the effectiveness of their nutrient reduction programs particularly to ensure that the goals for nitrogen reduction are met and that each State/Tribe is making appropriate contributions to the overall basin reduction goals.
- States and Tribes will develop Total Maximum Daily Loads (TMDLs) for those waters identified as priorities through their Continuing Planning Process and by listing on the 303(d) list in accordance with their respective

State priority lists. Where possible, States and Tribes are encouraged to give priority for developing TMDLs to those watersheds identified as significant sources of nitrogen to downstream waters that flow to the Basin.

• States and Tribes will develop numeric water quality standards for nutrients based on enhanced monitoring and research information linking nutrient loadings to water quality in the Basin.

• States and Tribes should assess water quality impairments in accordance with their watershed strategies based on the adopted standards for nutrients.

States, Tribes, and Federal Agencies

• The U.S. Army Corps of Engineers (COE), in conjunction with the U.S. Environmental Protection Agency (EPA), the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Interior, U.S. Department of Agriculture (USDA) and the State of Louisiana, will target the Coastal Wetlands Planning, Protection, and Restoration Act and other pertinent program resources for diversions and other related projects that further the goals of restoring coastal wetlands, removing nitrogen, and protecting near coastal water quality from excessive nutrient enrichment. The Corps, working with the Upper Mississippi River Basin States and Tribes through use of Navigation and Environmental Management or Restoration Programs, will promote pool management and other actions in the upper Mississippi River Basin targeted at enhancement of nitrogen removal during critical periods of the year.

• States, Tribes, USDA and EPA will target programs and State Revolving Loan Funds to improve municipal stormwater programs; promote the use, where appropriate, of centralized sewage treatment and Biological Nitrogen Removal in municipal sewage treatment plants; and improve the application, operation and maintenance of on-site systems.

• States, Tribes and EPA will target Clean Water Act Section 319 funds to improve nitrogen management and wetland and riparian buffer restoration and creation for water quality benefits.

• States and Tribes, in conjunction with the U.S. Geological Survey (USGS), USDA, EPA, COE and the National Oceanic and Atmospheric Administration (NOAA), will implement a coordinated monitoring program for the Basin. USDA, COE and EPA will have a leadership role in establishing the scope and plan for periodic inventory of programmatic and economic indicators. NOAA will have a leadership role in the monitoring and model development related to oceanographic processes and impacts of hypoxia. USGS will have a leadership role in monitoring of water-quality conditions and in development of models and related methods to evaluate water-quality trends and the effectiveness of management actions within the Basin. The States and Tribes will provide leadership in coordination of efforts within and along State and Tribal boundaries in order to insure that monitoring and model development are consistent among the various State and Federal programs.

• In cooperation with federal agencies, States will document and monitor land use changes to identify priority areas of likely nitrogen loss to streams. States will work with the USDA to complete soil maps for all agricultural areas in the basin and evaluate in more detail the soil nutrient loading and cycling in critical areas.

• NOAA, EPA, COE and the State of Louisiana, will develop and implement a comprehensive monitoring and assessment strategy for the northern Gulf hypoxic region based on the critical needs identified in the CENR assessment.

• EPA, in cooperation with other federal agencies, States, Tribes, and the National Water Quality Monitoring Council, will standardize monitoring and reporting of nutrient loading by point source dischargers within the Mississippi and Atchafalaya River Basin.

• USGS, USDA, EPA, COE and NOAA, in concert with other Federal and State agencies and non-government organizations, will pursue research to reduce the uncertainties in the scientific assessment, to improve monitoring and modeling capabilities, and to improve BMPs for reducing nutrient losses from nonpoint sources.

• State, Tribal and Federal agencies will increase the coordination of their activities as they affect the Basin using mechanisms such as the Clean Water Action Plan, State Technical Committees, and State/Tribe-led stakeholder input fora. Agencies will be responsive to locally-led conservation activities.

• EPA, NOAA, States and Tribes will develop water quality criteria for nutrients, including criteria for nitrogen that are tailored to the coastal ecoregions of the Northern Gulf of Mexico and near-coastal marine waters of the Gulf hypoxic region.

Federal Agencies

• The Federal agencies will direct the Environmental Quality Incentive Program (EQIP), the Conservation Reserve Program (CRP), the Wetlands Reserve Program (WRP), Agricultural Extension Education Programs, Clean Water Act Section 319 resources, and other Environmental Restoration Programs into state-targeted watersheds to: establish stream-side buffers; increase producer participation and acres under the CRP and WRP in areas that will protect surface waters and restore natural nutrient cycling in aquatic systems; increase the number of acres in conservation tillage; increase the number of producers and acres under voluntary nutrient management plans; and improve animal waste management practices.

• EPA will provide technical, financial and institutional support to assist States and Tribes to upgrade their nonpoint source programs and will provide grants to be passed-through to landowners as incentives for improved practices. NOAA and EPA will support targeted implementation of Louisiana's Coastal Nonpoint Source program as provided in sec. 6217 of CZARA.

• EPA will approve prioritization and listing of impaired waters (Lists), including impaired coastal waters as appropriate, in accordance with Section 303(d) of the Clean Water Act. Where EPA determines that Lists or TMDLs do not satisfy requirements of the CWA, EPA is required to issue Lists and develop TMDLs.

The Framework and Approach for Reducing Hypoxia in the Gulf of Mexico

There are no simple solutions that will reduce hypoxia in the Gulf. An optimal approach would take advantage of the full range of possible actions to reduce nutrient loads and increase nitrogen retention and denitrification within a framework that encourages adaptive management and accomplishes this in a cost effective manner. While reduction of nitrogen is the principal focus of this framework, many of the actions needed to reduce nitrogen loads will complement and enhance existing efforts to restore water quality throughout the basin. With additional assistance, this national effort to reduce Gulf hypoxia will be implemented within the existing array of state and federal laws, programs and private initiatives.

The tools provided by the Clean Water Act, and the programs established under the last several Farm Bills and Water Resources Development Acts, are

critical to implementing this plan. Because nutrient over-enrichment is a widespread problem, these existing national programs and initiatives incorporate specific elements intended to reduce nutrient loadings to surface waters and to foster restoration of natural habitats capable of removing nutrients from waters. They include:

- encouraging nonpoint source pollutant reductions under the Clean Water Act, the Farm Bill, and State cost-sharing programs;
- implementation of the Environmental Quality Incentives Program (EQIP) to assist grain and livestock producers in reducing excessive nutrients' movement to water resources;
- implementation of the Conservation Reserve Program, Wetlands Reserve Program, Corps of Engineers Environmental Restoration Programs, and Agricultural Extension Education Programs to promote restoration and enhancement of natural systems for nitrogen retention and denitrification;
- increasing emphasis on nutrient management through State and Tribal efforts to implement watershed based approaches to water quality management, including monitoring and assessing waters, adoption of water quality standards, including nutrient criteria, developing total maximum daily loads (TMDLs), and implementing point source controls through the National Pollutant Discharge Elimination System (NPDES);
- promoting public-private partnerships to restore buffers;
- implementation of Louisiana's Coastal Nonpoint Pollution Control Programs under the Coastal Zone Act Reauthorization Act in the lower Mississippi and Atchafalaya Rivers;
- supporting actions by non-water quality State and Tribal agencies, private landowners, the agricultural and other industries to reduce nitrogen loadings to the basin; and,
- providing voluntary incentives for nitrogen reductions from point and nonpoint sources.

This plan recognizes and builds upon these requirements, programs and initiatives. A successful strategy to restore water quality in the Gulf of Mexico will almost certainly benefit water quality throughout the Mississippi and Atchafalaya River Basin.

Adaptive Management: Action, Monitoring and Research

The complex nature of nutrient cycling and transport within the Mississippi and Atchafalaya River basins and Gulf of Mexico make it difficult to predict specific improvements in water quality that will occur both in the Gulf as well as the entire Mississippi River basin for a given reduction in nutrient loads. Further, it is clear that environmental responses to management actions in the basin likely will be slow, possibly requiring decades to demonstrate that remedial actions have helped the recovery of oxygen concentrations in the Gulf and have improved water quality in the Basin. Finally, while the current understanding of the causes and consequences of Gulf of Mexico hypoxia is drawn from a massive amount of direct and indirect evidence collected and reported over many years of scientific inquiry, significant uncertainties remain. Further monitoring, modeling and research are needed to reduce those uncertainties in future assessments and to aid decision making in an adaptive management framework. A comprehensive program of planning, monitoring, interpretation, modeling, and research to facilitate improvement in scientific knowledge and adjustments in management practices should be coupled to the initial nutrient management strategies identified in this plan. This adaptive management scheme involves continual feedback between interpretation of new information and improved management actions and is the key to targeting BMPs within watersheds where they will actually be effective.

This adaptive approach should consist of the following components:

- *Action:* implementing the actions identified in this plan including developing sub-basin strategies, initiating additional monitoring and research, and pursuing a national commitment to supporting actions to reduce and mitigate the impacts of hypoxia in the Gulf.
- *Education:* increasing the stakeholder awareness of the causes and effects of hypoxia, the actions underway or planned to reduce those effects, and the role of state, local and tribal governments as well as individual landowners, citizens and businesses to contribute to the solution. Make this information available through electronic media and sharing the latest news on successful approaches and reductions.
- *Monitoring:* increasing the scale and frequency of monitoring of both the extent of the hypoxic zone and the sources and conditions of waters throughout the basin.
- *Research and Modeling:* reducing the uncertainties of the effects of the hypoxic zone, the sources of contributing factors and the biochemical processes that underlie the causes and effects of the hypoxic zone, and the social and economic impacts of various control strategies;
- *Evaluation and Adaptation:* reviewing periodically the monitoring and research results to revise this plan, through the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

This plan seeks to take maximum advantage of water quality improvement efforts underway or planned nationally and proposes a mechanism to better focus those efforts. Water resources within the Basin—rivers, wetlands, lakes, and streams—and the Gulf of Mexico are expected to benefit from these efforts. Many specific water quality improvement actions can be undertaken by industries, municipalities, farmers, ranchers, and other citizens. These actions can raise property values, conserve soil, increase productivity, reduce input costs and provide habitat for game and fish and revenue from hunting, fishing and other recreation. Because of the economic benefits of these measures to the landowners and other stakeholders who undertake them, education and voluntary, incentive-based, approaches can be effective in promoting such actions, in particular best management practices (BMPs).

Funding the National Effort: Clean Rivers/Clean Gulf Budget Initiative

This action plan proposes a Clean Rivers/Clean Gulf budget initiative to restore the waters of the Mississippi/Atchafalaya River Basins and the hypoxic zone in the Gulf of Mexico. This initiative would provide flexible funding to support implementation of the most practical, appropriate, and economical, mix of strategies as determined by implementation action #2 above, to address the linked problems of inland water quality in the Mississippi/Atchafalaya River Basins and Gulf of Mexico Hypoxic Zone.

Basin-wide Goal: State/Tribal-led Strategies Within a National Commitment

There are multiple sources of nitrogen contributing to nutrient over-enrichment in the Gulf of Mexico, including about 11 percent from municipal and industrial point sources, 65 percent from agricultural nonpoint sources, and about 24 percent from other nonpoint sources; the mix of these sources varies considerably within the huge watershed of the Mississippi/Atchafalaya Rivers. Therefore, this initiative proposes an innovative Omnibus Mississippi-Gulf Restoration Fund, which would allow for resources to be allocated initially based on an

estimate of the relative proportion of the need and cost for remedial measures basin-wide to be determined by implementation action #2. The allocation would be re-visited periodically based on the actual distribution of actions taken under State strategies, and thus funds committed. The land area to be ''treated'' (⅔ of the 48 contiguous states), number of States involved (31), number of tribes involved (77), and resources damaged and at risk justify an investment in keeping with the scale of investments planned or undertaken in South Florida and the California Bay Delta, and greater than those pursued in the Chesapeake Bay and Great Lakes.

States and Tribes, will, on a basin-by-basin basis select the most appropriate, readily implemented approaches, building on existing water quality and habitat improvement programs. State strategies will draw from a broad menu of reasonable and cost-effective responses to prevent nutrients from reaching rivers and streams to be carried to the Gulf and to restore the natural capacity of the ecosystem to process nutrients into harmless substances. Important improvements in water quality in the lakes and rivers used and enjoyed regionally, as well as significant reduction of Gulf of Mexico hypoxia will result. States currently contribute significant resources to match (and overmatch) many Federal programs and their contributions would increase along with further Federal investment.

The Federal Government will provide resources to support pollution control and habitat restoration through several new and existing programs. The Federal interest in this effort is clear: interstate waters, producing economically valuable goods and services and representing a key component of our national patrimony, are damaged and at further risk. Large-scale, Federally-funded navigation and flood control projects throughout the basin contribute to the problem, as well as smaller scale state and local contributions from wastewater treatment systems and farming practices. Often these actions were taken without adequate consideration of local or down-river impacts. Many of the investments proposed will have the further national policy benefit of supporting the farm economy at a time of severe stress.

Mississippi-Gulf Omnibus Restoration Fund

Elements of the Restoration Fund are:

Wetlands Restoration Fund: Restore Wetlands

Restoration/creation of wetlands to intercept and bioremediate nutrients from agricultural run-off; acquisition of land and/or easements and construction and operation of wetland treatment systems. *Action will also produce flood damage reduction benefits and habitat benefits.*

Principal Programs

USDA: Wetlands Reserve Program, Conservation Reserve Program, NRCS Technical Assistance, Extension Education

USFWS: North American Waterfowl and Wetlands Program, Partners for Fish and Wildlife Program, National Wildlife Refuge System

USEPA: Sec. 319 Grant program, Clean Water State Revolving Loan Fund (CWSRF)

NOAA: Coastal Wetland Restoration Projects

USACE: Section 206 WRDA '96, Aquatic Ecosystem Restoration; Section 204 WRDA '92 Use of dredged material to protect, restore, and create aquatic and ecologically related habitats; Section 1135, WRDA '86, Project Modifications for Improvement of the Environment; Specific General Investigations to address wetland restoration

Offset: Reductions in Crop Insurance Payments for Farming in Flood Prone Areas

Agricultural Nutrient Efficiency Fund: Use Management Practices for Nutrient Loading Reductions

Incentive payments and technical assistance to increase agronomic efficiency and improve management practices; could potentially provide payments in lieu of insurance fertilizer use. Action will also provide farm income security to participants.

Principal Programs

USDA: CRP, EQIP, Extension Education

USEPA: 319 Grants, CWSRF

NOAA: 306 Grant Program, CZMA

Clean Rivers-Clean Gulf Fund: Improve Stormwater and Wastewater Nutrient Removal Efficiency of new and existing wastewater treatment infrastructure. Also can finance agricultural practice improvements and wetland restoration.

Principal Programs

USEPA: CWSRF, Sec. 319 Grant program

USACE: Section 206 WRDA '96, Aquatic Ecosystem Restoration; Section 204 WRDA '92 Use of dredged material to protect, restore, and create aquatic and ecologically related habitats; Section 1135, WRDA '86, Project Modifications for Improvement of the Environment; Specific General Investigations to address wetland restoration.

River Remediation Fund: A. Operate and Retrofit Corps Projects for Water Quality Improvements; and, B. Creation and Restoration of Riparian Buffers. Action will also provide habitat for waterfowl, fish, and wildlife.

To waive local cost share for retrofit to Corps projects since benefits of re-engineering are primarily realized basin-wide and in the Gulf. In appropriate areas Corps and USDA work with agriculture owners to create and restore buffers. In coastal wetlands Corps works with States, Tribes and local governments to implement river diversions to coastal wetlands.

Principal Programs

USACE: Section 212 WRDA '99 Flood Mitigation and Riverine Restoration Program; Section 206

WRDA '96, Aquatic Ecosystem Restoration; Section 204 WRDA '92 Use of dredged material to protect, restore, and create aquatic and ecologically related habitats; Section 1135, WRDA '86, Project Modifications for Improvement of the Environment; Specific General Investigations to address wetland restoration

USDA: CRP, EQIP, Extension Education

Watershed Partnership Investment Fund: Assessment & Targeting, State Strategy Formulation, Stakeholder Involvement, program management. Will strengthen state-level and tribal capacity to address Hypoxia and in-basin water quality problems.

Principal Programs

USEPA: Clean Water Grants to States and Tribes (sec. 106) for assessment, monitoring, TMDLs, Watershed Assistance Grants to Basin Associations, large Scale Demonstration program for innovative approaches

USACE: Section 729, WRDA '86, Study of Water Resources Needs of River Basins and Regions; Section 4, WRDA '00, Watershed and River Basin Assessments; Specific General Investigations at the watershed level

USDA: CSREES Water Quality Program

Hypoxia Adaptive Management Fund: Research, Monitoring and Modeling.

To refine targeting, improve efficiency of response actions, evaluate progress.

Principal Programs

NOAA: Research, assessment and monitoring in the Gulf of Mexico

USGS: Research, assessment and monitoring in the MS Basin

USEPA: Support for adaptive management process in collaboration with States, Tribes and Federal Agencies

USDA: Research on Improved Agricultural Practices

USACE: Modeling capabilities within existing research and development programs, and research on nutrient fate and nutrient cycling.

Hypoxia Remediation Innovation Fund: To fund large scale innovative projects.

Principal Programs

USEPA, USDA, and USACE: Research, development and demonstration projects

NOAA: Coastal research, development, and demonstration projects

Indicators of Success/Progress

Effective implementation of a management action plan to reduce the size and effect of the hypoxic zone in the Northern Gulf of Mexico and to improve water quality within the Mississippi and Atchafalaya River Basin will require a monitoring strategy that measures progress toward achieving both long-term and short-term goals. Feedback from such a monitoring strategy will facilitate an adaptive management framework that enables continual improvement of the action plan with increasing knowledge of the factors and processes controlling nutrient losses, their effects on water quality, and the effectiveness of management actions.

A multi-scale, multidisciplinary, and long-term monitoring strategy one of the key implementation actions above. The strategy must include measurement of indicators of progress in implementing management or programmatic actions, indicators of environmental response of water quality in the Mississippi and Atchafalaya River Basin and hypoxia in the Gulf of Mexico, and indicators of economic conditions that can be used to gauge the significance and implications of management actions. It must quantify environmental trends and differentiate among trends caused by changes in climate, streamflow, nutrient and landscape management measures, Gulf hydrodynamics, and other concurrent factors. Variables should be measured to quantify the physical, chemical, and biological processes that affect the cause-and-effect relationships between nutrient inputs and resulting environmental quality. The strategy must include periodic data analysis, interpretation, and reporting to all stakeholders that are involved with design and implementation of management, remediation, and restoration actions. Analysis and interpretations must use models that integrate knowledge across scales and hydrologic compartments from the smallest watershed to the Mississippi and Atchafalaya River Basin and the Gulf of Mexico.

A coordinated and supporting research strategy is integral to maintenance of an effective monitoring strategy and an adaptive management framework for action. Research efforts can be targeted on improving monitoring designs, improving the interpretation of monitoring output, and increasing the predictive power of models and other assessment tools used to design and evaluate management actions.

A baseline condition needs to be established for all indicators and the monitoring strategy in general to quantify the improvements associated with management action. The expected delay in the response of indicators to management actions, indicates that additional improvements in water quality will continue to be realized from actions that have already been implemented, as well as from future management actions. The CENR science assessment has provided a large-scale (Basin and Gulf scale) estimates of baseline conditions in the Mississippi and Atchafalaya River Basin (generally for the period 1980–96) and the Gulf of Mexico (generally for the period 1993–97). Additional information available from other sources at more local scales should be included in these definitions of baseline conditions. In addition, more recent information may be available to improve these baseline definitions. The 1997 Hypoxia Response Interagency Activity Report provides an initial listing of programs that could be evaluated for participation through programmatic indicators. Baseline conditions will need to be defined for these indicators.

Indicators that have been considered for the monitoring strategy are listed below. A more detailed and comprehensive evaluation of indicators will be conducted under Implementation Action #2.

Environmental Indicators

- Dissolved oxygen concentrations within the current hypoxic zone increase (above 2 mg/l) resulting in a reduction in the duration and spatial extent of the hypoxic zone. Data should provide resolution of the spatial extent and duration of the hypoxic zone.
- Seasonal/annual average nitrogen and phosphorus concentrations and mass loadings are reduced at key river and tributary stations. Measurement stations should represent watershed scales ranging from the local scales at which specific management actions are tested to the scale of the Mississippi and Atchafalaya River Basin as it discharges to the Gulf.
- Bottom-dwelling communities in the current hypoxic zone in the northern Gulf return to a diversity and abundance characteristic of non-hypoxic conditions and normal migratory patterns of key species are restored.

Programmatic Indicators

The following indicators will be tracked at various scales. In general, nonpoint sources will be tracked at 8 digit Hydrologic Unit Code (HUC) basins and point sources by discharge location or 8-digit HUC basin:

- Vegetative or forested buffers established along rivers and streams of priority watersheds
- Producer/acres enrolled in CRP and WRP
- Acres in conservation tillage
- Producers implementing nutrient management plans and the number of acres affected
- States with fully approved Coastal Nonpoint Pollution Control Programs. Percent population served by secondary treatment
- Percent population served by Advanced Waste Treatment/Biological Nutrient Removal
- Reduction in discharges of nitrogen and phosphorus for municipalities
- Number of municipal stormwater programs approved
- Estimated/monitored reductions in nitrogen and phosphorus (or surrogate indicators) for industrial point sources.
- Number of 303(d) water segments listed because of nutrient impairment
- Number and percent of wetland acres restored, enhanced or created
- Completion of TMDLs for nutrient impaired waters
- Number of States and Tribes within the Mississippi and Atchafalaya River Basin achieving Enhanced Benefits status under the 319 Program. Number of projects and amount of dollars directed through EQIP, CRP, WRP, and section 319 to target sub-basins within the Mississippi and Atchafalaya River Basin.

Economic Indicators

- Population

- Gross Domestic Product
- Industrial Output
- Land Area in Crop Production
- Agricultural Output in numbers of animals and bushels of commodity crop

Dated: July 5, 2000.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 00–17354 Filed 7–10–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MD Docket No. 00–58; FCC 00–240]

Assessment and Collection of Regulatory Fees for Fiscal Year 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is revising its Schedule of Regulatory Fees in order to recover an amount of $185,754,000 in regulatory fees that Congress has required it to collect for Fiscal Year 2000. This summary of the FCC's FY 2000 Regulatory Fees decision will be followed by publication in the **Federal Register** of the full text at a later date. The dates for collecting regulatory fees will be September 11, 2000 through September 20, 2000.

DATES: Effective September 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445, or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: The Communications Act of 1934 (''Act''), as amended, provides for the annual assessment and collection of regulatory fees. For Fiscal Year 2000, changes to the Schedule of Regulatory Fees will be made per section 9(b)(2) of the Act. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

As mandated by Congress, the FY 2000 Regulatory Fees increased by $13,231,000, or approximately 7.67 percent, over the amount Congress required the Commission to collect in FY 1999. We are, therefore, revising the Schedule of Regulatory Fees to reflect this additional amount that was mandated by Congress. For FY 2000, as in FY 1999, the revenue requirements for each category were adjusted on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain a sum total of the amount Congress required the Commission to collect. As in FY 1999, none of the fee increases in FY 2000 exceed 25 percent. In brief, the adopted FY 2000 Regulatory Fee schedule will assess a fee on Comsat's INTELSAT facilities; incorporate the use of a new form which would change the basis for computing the fee for Interstate Telephone Service Providers; and continue to assess a CMRS messaging fee for SMR systems with less than 10 MHz bandwidth.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–17501 Filed 7–10–00; 8:45 am]

BILLING CODE 6712–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Truman Scholarship Foundation [Foundation] has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment: the first was published in the **Federal Register** [May 3, 2000 (Volume 65, Number 86), Page 25730], and no comments were received. The Foundation is forwarding the proposed renewal submission to OMB for clearance simultaneously with the publication of this second notice.

Comments: Comments regarding [a] whether the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; [b] the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; [c] ways to enhance the quality, utility and clarity of the information to be collected; or [d] ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Harry S. Truman Scholarship Foundation, 725 17th Street, NW, Room 10235, Washington, DC 20503, and to Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW, Washington, DC 20005 or send e-mail to *Lblair@truman.gov*.

DATES: Comments regarding this information collection is best assured of having their full effect if received on or before August 8, 2000. Copies of the submission may be obtained at 202–395–7433.

FOR FURTHER INFORMATION CONTACT: Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW, Washington, DC 20005 or send e-mail to *Lblair@truman.gov*.

The Foundation may not conduct a collection of information unless the collection displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truman Scholarship Application

OMB Approval Number: 3200–0004

Proposed Project: The foundation has been providing scholarships since 1977 in compliance with PL 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Finalists Selection Committee to determine whom to invite to interviews. It is used by Regional Review Panels as essential background information on the Finalists whom they interview and ultimately the Truman Scholars they select. A total response rate of 100% was provided by the 598 candidates who applied for Year 2000 Truman Scholarships.

Estimate of Burden: The foundation estimates that, on average, 50 hours per respondent will be required to complete the application, for a total of 30,000 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 600

Estimated Total Annual Burden on Respondents: 30,000 hours

Dated: July 6, 2000.

Louis H. Blair,

Executive Secretary.

[FR Doc. 00–17564 Filed 7–10–00; 8:45 am]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Technical Review Panel on the Medicare Trustees Reports; Notice of July 26–27 Meeting

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of July 26–27 meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the second meeting of the Technical Review Panel on the Medicare Trustees Reports (the Panel). This meeting is open to the public.

Pursuant to Public Law 92–463 (the Federal Advisory Committee Act), the Panel was established on August 12, 1999, by the Secretary of HHS to review the methods and assumptions underlying the annual reports of the Board of Trustees of the Hospital Insurance and Supplementary Medical Insurance Trust Funds.

DATES: The meeting will be held on Wednesday, July 26, 2000 (9:00 a.m. to 5:00 p.m.) and Thursday, July 27, 2000 (9:00 a.m. to 1:00 p.m.).

ADDRESSES: The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, 7500 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Ariel Winter, Executive Director, Technical Review Panel on the Medicare Trustees Reports, Department of Health and Human Services, Room 442E, 200 Independence Avenue, SW., Washington, DC, 20201, (202) 690–6860, medpanel@osaspe.dhhs.gov.

Additional information is also available on the Panel's web site: http://aspe.hhs.gov/health/medpanel.htm.

SUPPLEMENTARY INFORMATION: The Board of Trustees of the Medicare Trust Funds (the Hospital Insurance (HI) and Supplementary Medical Insurance (SMI) Trust Funds) reports annually on the funds' financial condition. The reports describe the trust funds' current and projected financial condition, within the next 10 years (the short term) and over the subsequent 65 years (the long term). The Medicare Board of Trustees has directed the Secretary of Health and Human Services (one of the Trustees) to establish a panel of technical experts to review the assumptions and methods underlying the HI and SMI annual reports.

The panel's review will include the following four topics:

1. Medicare assumptions (e.g., utilization rates, medical price increases).
2. Projection methodology (how assumptions are used to make cost projections).
3. Long-range growth assumptions for HI and SMI.
4. Use of stochastic forecasting techniques.

The Panel will issue its findings in reports to the Secretary and the other Trustees.

The Panel consists of six members who are experts in the fields of economics and actuarial science: Dale Yamamoto, F.S.A., M.A.A.A., F.C.C.A., E.A., B.S.—Chair; Len Nichols, Ph.D.; David Cutler, Ph.D.; Michael Chernew, Ph.D.; James Robinson, F.S.A., M.A.A.A., Ph.D.; Alice Rosenblatt, F.S.A., M.A.A.A., M.A. The members' terms will end August 12, 2001. Sam Gutterman, F.S.A., F.C.A.S., M.A.A.A., M.A., is a consultant to the Panel.

The second meeting of the Panel is scheduled for July 26, 2000 (9:00 a.m. to 5:00 p.m.), and July 27, 2000 (9:00 a.m. to 1:00 p.m.). The meeting will be held at the Health Care Financing Administration (HCFA) Headquarters, 7500 Security Boulevard, Baltimore, Maryland. The meeting is open to the public, but attendance is limited to the space available. The Panel's first meeting was held June 28–29, 2000.

At this meeting, the Panel will hear presentations from HCFA's Office of the Actuary on measures of actuarial soundness of the Medicare Trust Funds, specific health care utilization assumptions, and stochastic forecasting techniques used to make Trust Funds projections. The Panel will continue its discussions with Office of the Actuary staff on issues raised at the first meeting, such as the Trust Funds' benefits models. The Panel will also consider how to continue its analyses.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in this notice should contact the Executive Director by 12 noon on July 19, 2000. The number of oral presentations may be limited to the time available. A written copy of the presenters' oral remarks should be submitted to the Executive Director no later than 12 noon, July 19, 2000, for distribution to the Panel members.

Any interested member of the public may submit written comments to the Executive Director and Panel members for review. Comments should be received by the Executive Director by 12 noon, July 19, 2000, for distribution to the Panel members.

Individuals requiring sign language interpretation for the hearing impaired and/or other special accommodation, should contact Ariel Winter at (202) 690–6860 by July 17, 2000.

Dated: July 5, 2000.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–17518 Filed 7–10–00; 8:45 am]

BILLING CODE 4110–60–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Time and Date: 9:00 a.m. to 4:45 p.m., July 13, 2000; 9:00 a.m. to 1:30 p.m., July 14, 2000.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this hearing is to discuss local code issues and early implementation of the Administrative Simplification standards that will be required under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For local code issues, the Subcommittee will hear testimony delineating the problem and examining some of the tools and processes that could lead to a solution. For early implementors, the Subcommittee will hear a wide perspective of the issues from providers, vendor/clearinghouses, and geographic networks, as well as industry solutions.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street, #600, Rockville, MD 20852, phone: (301) 594–3938; or

Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information is also available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: June 28, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–17338 Filed 7–10–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–42]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects: National Disease Surveillance Program—I. Case Reports (0920–0009)—Reinstatement—National Center for Infectious Diseases (NCID)—Formal surveillance of 19 separate reportable diseases has been ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis, dengue, hantavirus, HIV/AIDS, Idiopathic CD4+T-lymphocytopenia, Kawasaki syndrome, Legionellosis, lyme disease, malaria, Mycobacterium avium Complex Disease, plague, Reye Syndrome, tick-borne Rickettsial Disease, toxic shock syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment. It is also used to recommend target areas in most need of vaccinations for certain diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total annualized burden is 27,110 hours. The total cost to respondents is estimated at $406,650.

Respondents	Respondents	Responses/respondent	Average [1]
Health care workers ...	55	1	.3

[1] Average burden/respondent (in hours)

Dated: July 5, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17447 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00143]

Intervention Epidemiologic Research Studies of HIV/AIDS; 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 to (1) continue the longitudinal epidemiologic study of perinatal HIV transmission and pediatric disease progression during an era of highly active antiretroviral (ARV) therapy and (2) develop and implement innovative interventions to assist HIV infected children and adolescents (both perinatally and non-perinatally infected) in accessing and maintaining comprehensive HIV related care. The interventions will be directed at sustaining HIV specialist care, improving adherence to complex medical regimens, promoting overall and reproductive health, and decreasing the risk of secondary transmission of HIV infection. This program addresses the ''Healthy People 2010'' priority area of HIV Infection and Maternal and Infant Health. For a conference copy of ''Healthy People 2010'' visit the internet site: <http://www.health.gov/healthy people>.

The purpose of the program is to support three research studies of programmatic interest to the health care community that fosters prevention of HIV-related disease in infants, children, and adolescents. These studies include: (1) Ongoing longitudinal record review of Pediatric HIV disease, (2) development and evaluation of innovative intervention(s) to enhance sustained HIV specialist care and improved adherence to antiretroviral (ARV) medication drug regimens in children, from 5–12 years of age, and (3) development and evaluation of innovative interventions to provide linkages to and help sustain continuity of HIV specialist care, to foster adherence to HIV therapy, improve overall and reproductive health, and reduce transmission from HIV-infected adolescents ages 13–21 years, to others.

The following three Research Studies will be supported:

I. Ongoing Longitudinal Record Review Study of Pediatric HIV Disease

Competing continuation applications are invited for the continued prospective follow-up of HIV-infected children enrolled in the Pediatric Spectrum of Disease (PSD) Study between 1988 and 2000. Continued research areas of interest include:

A. Perinatal HIV Prevention

1. Characterization of perinatally infected infants with respect to their risk factors for HIV infection and clinical and laboratory outcomes.

2. Investigation of potential severe adverse events related to exposure to antiretrovirals and/or other HIV-related therapies.

3. Description of circumstances of delivery and associated infant and maternal morbidities.

4. Frequency and description of birth outcomes to perinatally-infected adolescents.

B. Pediatric and Adolescent Management:

1. Factors associated with health and disease progression:

a. Viral load and ARV resistance

b. Immune function and reconstitution

c. Growth and development, including puberty

d. Timing, type, and duration of therapy

e. Factors affecting adherence (including HIV infection status disclosure)

f. Potential side effects of ARV therapy

2. Identification of barriers to:

a. Timely receipt of care

b. Durability of relationship with providers

3. Description of family structure and social risk factors

4. Characterization of developmental needs and linkage to special services for HIV-infected adolescents (*e.g.* health, family planning, STD clinic services, case management around HIV disease, etc.)

II. Innovative Intervention(s) To Enhance Sustained HIV Specialist Care and Improved Adherence to Antiretroviral Medication Drug Regimens in Children, From 5–12 Years of Age

The complex nature of combination antiretroviral regimens emphasizes the need to develop innovative interventions to help children adhere to prescribed drug therapy. Age-appropriate interventions need to be designed and evaluated for both perinatally and non-perinatally infected children. Applications are invited to propose and develop intervention trials for children with evidence of current disease progression or treatment failure. The intent is to examine the impact of intervention strategies which address the following issues:

A. Fostering sustained comprehensive HIV specialist care:

1. Assessing barriers to sustaining continuity of specialist HIV care.

2. Developing and implementing strategies (e.g. reminders, support groups, etc.) to overcome individual and family barriers including HIV disclosure issues.

3. Linking to services which enable continuity of specialist HIV care. (*e.g.* transportation, day care, family-based care, education, etc.)

4. Developing and implementing methods for locating and re-engaging children lost to follow-up.

B. Promoting adherence to medications:

1. Assessing individual and family barriers to adherence to medication.

2. Linking to services which facilitate adherence (medication education, case management, social, pharmacist, etc.)

3. Developing and implementing strategies (*e.g.* dosing and medication schedules, child's preferences, in-home assistance, out-of-home adherence, reminders, use of MEMS®Caps, support groups, etc.) to overcome individual and family barriers including HIV disclosure issues.

III. Innovative Interventions to Provide Linkages to and Help Sustain Continuity of HIV Specialist Care, To Foster Adherence to HIV Therapy, To Improve Overall and Reproductive Health, and To Reduce Secondary Transmission Among Perinatally or Non-Perinatally HIV-Infected Adolescents, From 13–21 Years of Age

Applications are invited that propose interventions that are developmentally focused, targeting issues of importance to adolescents and young adults, and address two or more of the following issues:

A. Linking to HIV specialist care:

1. Identifying HIV counseling and testing sites where HIV-infected adolescents are diagnosed.

2. Developing and documenting the procedures for referring identified HIV infected adolescents from counseling/testing sites to HIV specialist care providers appropriate for adolescents.

3. Facilitating the follow through of referrals made to HIV specialist care providers.

B. Maintaining continuity of HIV specialist care.

1. Assessing barriers to sustaining continuity of specialist HIV care.

2. Linking to services which enable continuity of specialist HIV care. (e.g. education, social, etc.)

3. Developing and implementing strategies to overcome individual, family or social barriers including HIV disclosure issues (reminders, support groups, etc.)

4. Developing and implementing age appropriate and culturally relevant strategies for locating and re-engaging adolescents lost to follow-up.

C. Promoting adherence to medication regimens:

1. Assessing individual, family and social barriers to adherence to medication.

2. Linking to services which facilitate adherence (medication education, case management, social, pharmacist, etc.)

3. Developing and implementing strategies to overcome individual, family and social barriers, including addressing HIV disclosure issues (dosing and medication schedules, adolescent's preferences, in-home assistance, reminders, etc.).

D. Develop interventions to support overall and reproductive health of adolescents and that decrease secondary HIV transmission.

1. Developing and implementing counseling strategies for HIV infected adolescents designed to improve their overall and reproductive health and decrease risk of secondary transmission of HIV (e.g. by prevention of sexually transmitted diseases, decreasing risky sexual behaviors, avoidance of illicit drug use, etc.)

2. Evaluating the effectiveness of the counseling intervention.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

For research study area I, (longitudinal medical record review), eligible applicants include only those grantees currently funded for the Pediatric Spectrum of HIV Disease (PSD) Project under CDC Program Announcement 735. These sites include Children's National Medical Center, (Washington, DC), the Puerto Rico Department of Health, the University of Massachusetts Medical Center, the Texas Department of Health, the Public Health Foundation Enterprises, Inc. (Los Angeles), and the New York City Department of Health.

Note: 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

I. Research area I: Approximately $1.6 million is available in FY 2000 to fund approximately 6 competitive continuation projects. It is expected that the average award will be $260,000, ranging from $180,000 to $500,000.

II. Research area II: Approximately $200,000 is available in FY 2000 to fund approximately 2 awards for innovative intervention(s) for children 5–12 years

of age. It is expected that the average award will be $100,000.

III. Research area III: Approximately $200,000 is available in FY 2000 to fund approximately 2 awards for innovative interventions for adolescents 13–21 years of age. It is expected that the average award will be $100,000.

It is expected that all 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 4 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 program, the recipient will be responsible for the activities listed under

1. (Recipient Activities), and CDC will be responsible for conducting activities listed under 2. (CDC Activities).

1. Recipient Activities

Applicants addressing the same research issue should be willing to participate in collaborative studies with other CDC-sponsored researchers, including developing and using common data collection instruments, specimen collection protocols, and data management procedures, as determined in post-award grantee planning conferences. Recipients will be required to pool data for analysis and publication. Recipients are also required to work collaboratively as a study group to:

a. Develop the research study protocols and standardized data collection forms across sites.

b. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocols and the program requirements.

c. Follow study participants as determined by the study protocols.

d. Establish procedures to maintain the rights and confidentiality of all study participants.

e. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocols.

f. Collaborate and share data and specimens (when appropriate) with other collaborators to answer specific research questions.

g. Contribute blood specimens for drug resistance and therapeutic drug level studies for the intervention studies depending on the protocol requirements, for shipment and storage at a centralized repository system at CDC.

h. Conduct data analysis with all collaborators as well as present and publish research findings.

i. Attend biannual meetings with other funded grantees.

2. CDC Activities

a. Provide technical assistance as needed in the design and conduct of the research.

b. Facilitate and assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist as needed in designing a data management system.

d. Assist as needed in performance of selected laboratory tests.

e. Work collaboratively with investigators to help facilitate research activities across sites involved in the same research project.

f. Assist in the analysis of research information and the presentation and publication of research findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Follow the directions for completing the application that are found in the Public Health Service (PHS) 398 kit. If you are applying for more than one activity, you must submit a separate application for each research area.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: www.cdc.gov/...Forms, or in the application kit. On or before August 21, 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 independent review group. 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 that do not meet these criteria 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. Applicants will be ranked on a scale of 100 maximum points according to the research area identified. All applicants must state which research category they are addressing. Applications must demonstrate the applicant's ability to address the research in a collaborative manner with other recipients. Applications will be reviewed and evaluated based on the information submitted, as they specifically describe the applicant's abilities to meet the following criteria:

1. Familiarity With and Access To Study Population (25 Points)

a. Description of population to be studied, including number, age distribution, and other relevant demographic characteristics is described. The number of HIV-exposed (for Part I) and HIV-infected enrollees (for Parts I–III) to be prospectively monitored, and expected attrition from deaths and losses to follow-up over the study period based on prior experience is specified.

b. Description of the most important trends in disease progression, HIV and other health care needs, including gaps in services, of the population to be studied (e.g. HIV-exposed children, HIV-infected children, HIV-infected adolescents, HIV-infected mothers).

c. Ability to access and review neonatal, pediatric, adolescent and maternal prenatal and labor and delivery records. (Part I)

d. Ability to recruit at least 100 children for the pediatric intervention (Part II) or 50 adolescents for the adolescent intervention. (Part III)

e. Ability to identify and follow HIV-exposed but HIV-uninfected children and HIV-infected children for Part I, HIV-infected children between 5–12 years of age for Part II, and HIV-infected adolescents between 13–21 years of age for Part III. In addition:

(1) For part I, describes the plan to match HIV-exposed children over time (as long as they are followed in the study and after they are lost to follow-

up) with death, congenital birth defect, cancer and other registries to investigate potential severe side effects of antiretroviral exposure.

(2) For Part III, describes the sites where the majority of HIV-infected adolescents are being diagnosed (if ''linkages to care'' is included as a research area).

f. Prior research with or service provision to the study population and linkages and collaboration with other organizations providing medical and psychosocial services to the study population. As appropriate, include memoranda of agreement to document collaboration with organizations providing services to the study population.

g. Feasibility of plans for involving the service providers in the design and implementation of research activities.

h. Extent to which intervention plans take developmental stages into account and are appropriate for the population described. (Parts II and III)

i. Existence of linkages to facilitate monitoring the study population (all parts) including memoranda of agreement from the clinical facilities to permit record review. (Part I)

j. Demonstrated collaboration with local health departments and pediatric HIV/AIDS surveillance staff. (Part I)

2. Description and Justification of Research Plans (25 Points)

a. Quality of the review of the scientific literature pertinent to the proposed activities, including justification for and relevance of research questions and the proposed intervention. The research issues and a description of which ones must be addressed are described under the Purpose/Areas of Research section.

b. The applicant's understanding of the research objectives as evidenced by high quality of the proposed research plan.

c. The scientific soundness of the methods described by the applicant to:

(1) Abstract data and assure adequate follow-up of the pediatric, adolescent and maternal populations and timely completion of data forms and transfer of data to CDC (Part I)

(2) Develop and evaluate interventions in children 5–12 years of age (Part II), including:

(i) Review laboratory and disease indicators of (highly antiretroviral therapy) HAART failure in children 5–12 years of age (e.g. CD4 counts, HIV viral loads, history of AIDS defining conditions);

(ii) Interview children and their parents about factors potentially relevant to the children's treatment failure or success;

(iii) Design and operationalize standard and enhanced innovative interventions;

(iv) Randomize participants to one of the interventions and deliver the interventions;

(v) Monitor participants through the end of the study (e.g. monitor adherence to medications, measure drug levels, review laboratory and disease indicators of HAART failure, collect blood spots to measure ARV drug resistance); and

(vi) Evaluate the effectiveness of the interventions, including its cost-effectiveness.

(vii) Develop and deliver an intervention to HIV-infected adolescents from 13–21 years of age, monitor participants through the end of the study and evaluate the effectiveness of the intervention (Part III).

d. Ability and feasibility of collecting additional information from the medical records around the following areas (for Part I):

(1) Issues specific to adolescents;

(2) Issues specific to adherence to medical regimens; and

(3) Laboratory results related to ARV drug resistance.

e. Adequacy of methods for quality assurance including: Supervision of data abstraction, entry and cleaning, validation of accuracy and completeness of data abstraction and data entry, maintenance of consistency in methodology used by abstractors and data entry clerks in their procedures, and monitoring of study progress (Part I).

(1) Training and supervision of staff conducting interventions to ensure consistency in the methodology used for the intervention across all participants. (Parts II and III)

(2) Tracking follow-up of HIV-exposed children (Part I), HIV-infected children (Parts I and II), HIV-infected adolescents (Parts I and III) and HIV-infected mothers (Part I). This should include a description of the experience of the investigator in enrolling and monitoring the population to be studied (all parts) and the procedures used to ensure that participants will complete the interventions. (Parts II and III)

f. Scientific soundness, creativity and thoroughness of plans to analyze local data using quantitative methods and statistical techniques. (Parts I, II, and III).

g. Extent to which the intervention (Parts II and III):

(1) Represents an innovative approach.

(2) Meets unmet needs.

(3) Complements existing interventions.

(4) Avoids duplication of efforts.

(5) Incorporates cutting edge technology (e.g., MEMS®Caps, computer based interviews).

h. Adequacy of plans to disseminate research findings locally (including local collaborating service providers and participants of the study).

i. Extent to which study proposal demonstrates assurance of compliance with multisite research requirements (e.g., common protocol, data collection, and computer and data management systems).

j. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of ethnic and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of 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 communities and recognition of mutual benefits.

k. Extent to which application identifies and discusses any potential ethical issues associated with the proposed research and describes how these issues will be resolved.

(1) Describes procedures for obtaining IRB approval and maintaining participant confidentiality.

(2) Describes whether there are any additional IRB issues involved in: Reviewing mothers' medical records (Part I.) and matching ARV-exposed children to other registries after they are lost to follow-up to identify potential long term severe side effects which might be associated with ARV prophylaxis (e.g., how long can names be maintained at the local level for matching purposes?).

(3) Describes the state laws about obtaining informed consent in children and their parents (e.g., assent of children > 7 years of age, parental consent) and adolescents for the purposes of conducting an intervention. (Parts II and III).

(4) Describes the state laws for considering an adolescent as an ''emancipated minor''. (Part III)

(5) Notes whether the site currently has an IRB which has the authority to provide an assurance for the project being proposed or if not, whether they will need assistance from CDC in applying for such an assurance.

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.

3. Provision of HIV/AIDS Report Data to and Collaboration With Local Pediatric or Adults HIV/AIDS Surveillance Activities (10 Points)

a. Adequacy of procedures for collaborating with local health department pediatric or adult HIV/AIDS surveillance staff to report children or adolescents with HIV exposure, infection, and/or AIDS (depending on state law). Includes a signed memorandum of agreement detailing the outlined division of responsibilities, joint activities to evaluate completeness, timeliness, validity of the HIV/AIDS report data, methods to ensure security and confidentiality of HIV/AIDS report data, and use of data (Part I.)

b. Feasibility of plans for completion and computer entry of HIV/AIDS report forms and complete and timely transfer of HIV/AIDS case reports to the local HIV/AIDS surveillance unit.(For Part I)

c. Adequacy of measures to assure completeness of HIV/AIDS report forms, data quality and timeliness, and protection of confidentiality. (For Part I)

d. Adequacy of measures to assure timely reporting of HIV/AIDS cases among children and adolescents participating in the intervention studies to the local HIV/AIDS surveillance if mandated by state law, and to assure protection of confidentiality . (For Parts II and III)

4. Demonstration of Staff's Capability To Conduct Research (20 Points)

a. Capacity to conduct the proposed activities as evidenced by previous experience and scientific expertise. Demonstration that staff has:

(1) Experience working with the targeted population of study participants;

(2) Principal investigators or staff have previous experience and scientific expertise in the area of research to be conducted (either in epidemiologic research in Part I or behavioral assessment, intervention, and evaluation research, including evaluation of cost-effectiveness, for Parts II and III.). Include table of current and previous relevant research projects, their status, sources and levels of funding and principal investigators and list of references of any publications on related research by study staff.

(3) The experience needed to conduct the intervention (e.g., nurse counselor, or study coordinator, etc.)

b. Inclusion of the curriculum vitae for key staff members as well as memoranda of agreement that clearly and specifically document activities to be performed by any external experts, consultants, or collaborating agencies under the cooperative agreement.

5. Staffing, Facilities, and Time Line (20 Points)

a. Availability of qualified personnel with realistic and sufficient percentage-time commitments;

b. Clarity of the described duties and responsibilities of existing and proposed project personnel with epidemiologic, administrative, clinical, data management (including HIV/AIDS case reporting to local surveillance unit), and statistical responsibilities. Organizational chart depicts lines of authority.

c. Adequacy of clinical oversight of the project, especially supervision of data abstraction and entry.

d. Adequacy of base staff to keep pace with anticipated workload such as the biannual medical record review for the number of children to be monitored prospectively (Part I) and the interventions involved with children (Part II) and adolescents (Part III).

e. Adequacy of equipment, facilities and systems to be used for data abstraction and follow-up tracking, data entry and analysis, project management, data security and participant confidentiality.

f. Feasibility of plans to communicate, ensure quality control and consistency, identify and resolve problems, and analyze date in collaboration with other sites.

g. Inclusion of time line showing plan for completion of research activities and goals

6. Other (Not Scored)

a. Budget: The extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? ——Yes No Comments:

H. Other Requirements

Technical Reporting Requirements Provide CDC With Original Plus Two Copies of—

1. annual 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 paragraph J. Where to Obtain Additional Information.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care
AR–7—Executive Order 12372 Review
AR–8—Public Health System Reporting 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 sections 301(a) and 317(k)(2)of the Public Health Service Act (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (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 questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Brenda Hayes, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone number (770) 488–2741, Email address: BHayes@cdc.gov

For program technical assistance, contact: Jeff Efird, MPA, Deputy Chief, Epidemiology Branch, Division of HIV/AIDS Prevention Surveillance & Epidemiology, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–45, Atlanta, Georgia 30333, Telephone (404) 639–6130, E-mailjle1@cdc.gov

Dated: July 5, 2000.

Ron Van Duyne,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17445 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00134]

Leadership and Investment in Fighting an Epidemic (LIFE) Global AIDS Activity; 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 to increase United States support for sub-Saharan African countries and India to limit the further spread of HIV and to care for those affected by this devastating disease.

This additional funding is an action by the United States (U.S.) Government recognizing the impact that AIDS continues to have on individuals, families, communities and nations, and the need to do more. Over the next 5 years, it is expected that these activities will contribute to global targets established by the Joint United Nation Programme on AIDS (UNAIDS), in cooperation with the United States Agency of International Development (USAID) and other bilateral and multi-lateral partners. These goals represent the result of the total worldwide contribution of resources and effort. The U.S. Government seeks to further these goals through the LIFE Initiative:

- The incidence of HIV infection will be reduced by 25% among 15–24 year olds by 2005. (Currently 2 million young adults are infected each year in sub-Saharan Africa.)
- At least 75% of HIV infected persons will have access to basic care and support services at the home and community levels, including drugs for common opportunistic infections (TB, pneumonia, and diarrhea). (Currently, less than 1% of HIV infected persons have such access.)
- Orphans will have access to education and food on an equal basis with their non-orphaned peers.
- By 2002, domestic and external resources available for HIV/AIDS efforts in Africa will have doubled to $300 million per year. (Currently, approximately $150 million per year is spent on HIV/AIDS prevention in sub-Saharan Africa.)
- By 2005, 50% of HIV infected pregnant women will have access to interventions to reduce mother-to-child HIV transmission. (Currently, less than 1% of HIV infected pregnant women have access to such services in sub-Saharan Africa.) As a key partner in the U.S. Government's Leadership and Investment in Fighting an Epidemic (LIFE) Initiative, CDC, through its Global AIDS Activity (GAA) is working in a collaborative manner with national governments, USAID and other international partners to develop programs of assistance to address the HIV/AIDS epidemic in countries designated as LIFE countries by the U.S. Congress. At present, those countries are Botswana, Cote D'Ivoire, Kenya, South Africa, Uganda, Rwanda, Zimbabwe, Ethiopia, Mozambique, Malawi, Tanzania, Nigeria, Senegal, Zambia and India.

The overall objectives of the CDC's GAA are to:

- Reduce HIV transmission through primary prevention of sexual, mother-to child, and blood transmission.
- Strengthen the capacity of countries to collect and use surveillance data and to manage national HIV/AIDS programs.
- Improve community and home based care and treatment of HIV and sexually transmitted diseases (STDs) and opportunistic infections.

B. Eligible Applicants

Applicants must: (1) Be a U.S. Private Volunteer Organization (PVO), and have been granted tax-exempt status under Section 501(c)(3), evidenced by an Internal Revenue Service (IRS) determination letter; and (2) have at least 2 years experience in delivering HIV, STD, or TB prevention and care programs and/or prenatal/obstetric/reproductive programs in accordance with GAA objectives in at least 5 of the 15 countries (Botswana, Cote d'Ivoire, Ethiopia, Kenya, Malawi, Mozambique, Nigeria, Rwanda, Senegal, South Africa, Tanzania, Uganda, Zambia, Zimbabwe, India).

Note: 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 $5,000,000 is available to fund up to 4 awards in FY 2000. It is expected that awards will begin September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates are subject to change.

CDC expects to allocate $5,000,000 into 2 categories of program activities and services: (A) primary prevention (approximately 70% of available funds), and (B) care, support, and treatment (approximately 30% of available funds). These estimates may vary. In making these awards, CDC will use the ''CDC Global AIDS Activities Technical Strategies'' as a guide for selecting collaborative activities to be funded (See Attachment I).

Continuation awards within an approved project period will be made on the basis of the availability of funds and the applicant's satisfactory progress toward achieving defined objectives.

Satisfactory progress toward achieving objectives will be determined by progress reports and site visits conducted by CDC representatives.

Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested.

Funding Preference

Funding will be given to ensuring a geographic distribution of awards covering the 15 GAA countries in African and India.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under number 1. (Recipient Activities) and CDC will be responsible for activities under number 2. (CDC Activities).

1. Recipient Activities

a. Collaborate with CDC, partner governments, USAID missions, and other partners to ensure that: (1) There is country ownership of the activities, (2) proposed activities complement existing efforts both by the country and with other partners, and (3) activities are supportive of indigenous expertise and institutions.

b. Provide services in collaboration with CDC, partner governments and other partners for the development of capacity for the Ministry of Health and other in-country partners to deliver the services.

c. Provide assistance to countries to develop behavior change intervention programs with vulnerable populations such as youth (age 15–29 years old) and commercial sex workers and their clients. Intervention programs may include support of information, education and communication (IEC) campaigns, social marketing of condoms and behavior change.

d. Focus on no more than three of the following activities:

1. Voluntary Counseling and Testing (VCT)—implement, monitor, and evaluate HIV counseling and testing programs. Identify barriers and concerns raised in providing VCT and coordinate with campaigns to help reduce the fear, stigma, discrimination, and isolation associated with HIV infection and AIDS.

2. Mother To Child Transmission (MTCT)—implement feasible, sustainable interventions to decrease HIV MTCT, and assure that these interventions are integrated within maternal and child health (MCH) programs, strengthen antenatal care, promote the health of the mother, and enhance HIV prevention programs at the family and community level.

3. Blood safety—build or strengthen a national blood transfusion service to manage a national program, improve the safety and quality of the blood supply, decrease the demand for blood transfusion, and increase the supply of blood from low-risk volunteer blood donors.

4. STD prevention and care—expand and improve the diagnosis and treatment of STDs, including risk reduction counseling and education, as a means of reducing the continued transmission of HIV.

5. Prevention and Youth—implement youth-focused prevention/intervention programs, testing prevention programs, secondary prevention for HIV-positive youth, and build youth development programs.

6. Public-private partnerships—engage business and labor unions in a number of countries and provide technical assistance and materials for the development and implementation of public-private partnerships to address the spread of HIV/AIDS.

7. Care, support and treatment—improve the local capacity to prevent and treat HIV and related opportunistic infections with a special emphasis on TB and the implementation of palliative AIDS care programs.

e. Serve on a coordinating council with representatives of CDC as well as other collaborating organizations that will meet in Atlanta on a semi-annual basis. This council will review and coordinate program assistance plans and routine program performance measures to ensure consistent support of LIFE Initiative and global UNAIDS goals and objectives.

f. Participate in specific country-based workgroups that develop and review ongoing country assistance activities. The product of these workgroups will define the activities of the collaborating agencies as detailed in items a through d above.

2. CDC Activities

a. Collaborate with partner governments, USAID missions and other partners to assist recipients in the development of plans for program assistance based on the country needs, the CDC technical assistance portfolio, and HIV prevention activities conducted by other partners.

b. Provide consultation and scientific and technical assistance based on the ''CDC Global AIDS Activities Technical Strategies'' document to promote the use of best practices know at this time. See Attachment I, ''CDC Global AIDS Activities Technical Strategies'.

c. Facilitate semi-annual planning and review meetings in Atlanta for the purposes of coordinating recipient assistance programs in LIFE countries to ensure consistency in collaborative technical assistance activities.

d. Facilitate in-country planning and review meetings for the purposes of ensuring coordination of country-based program technical assistance activities.

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 narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Number each page clearly, and provide a complete Table of Contents to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. The following format should be used when developing your narrative:

Format

1. Background
2. Documented Needs
3. Eligibility and Capacity
4. Proposed Program Plan
   a. Goals
   b. Objectives
   c. Plan of Operation
   d. Evaluation Plan
   e. Collaboration
5. Budget and Staffing Breakdown and Justification

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Control Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov, or in the application kit. On or before August 24, 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 independent review group. (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. Capacity (30 Points)

a. The extent to which the applicant describes the ability to deliver HIV, STD, or TB prevention and care programs and/or prenatal/obstetric/reproductive programs in accordance with GAA objectives.

b. The extent to which the applicant documents personnel staff positions, experience, training, and recruitment.

2. Proposed Program Plan (40 Points)

a. The appropriateness of proposed activities and interventions and extent to which they are targeted to address the priority needs;

b. The quality of the proposed objectives and extent to which they are specific, realistic, measurable, and time-phased;

c. Extent to which proposed activities, if well-executed, are capable of attaining project objectives; the likelihood that the proposed activities, interventions, and services will achieve the stated program goals and intent of this program announcement.

3. Collaboration (15 Points)

Extent to which the applicant organization can document a history of successful collaborations with the U.S. government and/or non-governmental organizations in carrying out projects of public health impact.

4. Evaluation (15 Points)

Quality of the plan for evaluating the proposed program activities and the likelihood that the evaluation will provide information that will lead to improvement of the program.

5. Budget (Not Scored)

Extent to which budget is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress report
2. Financial status report, no more than 90 days after the end of the budget period; and
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.

For descriptions of the following Other Requirements, see Attachment II. Some of the more complex requirements have some additional information provided below:

AR–1 Human Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 307 of the Public Health Service Act, 42 U.S.C. 241 and 2421, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b. The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities—Nongovernmental Organization.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Scroll down the page, click on ''Funding'', then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (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 questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, MailStop E–15, Atlanta, GA 30341–4146, Telephone (770) 488–2736, E-mail address: dpr7@cdc.gov.

For program technical assistance, contact: Leo Weakland, Deputy Coordinator, Global AIDS Activity (GAA), National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E–07, Atlanta, GA 30333, Telephone number (404) 639–8016, Email address: lfw0@cdc.gov.

Dated: July 5, 2000.

Ron Van Duyne,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–17446 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8:30 a.m.–4 p.m., August 4, 2000.

Place: The Sheraton Colony Square Hotel, 188 14th Street, N.E., Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The committee will anticipate, identify, and propose solutions to strategic and broad issues facing CDC.

Matters to Be Discussed: Agenda items will include updates from Dr. Jeffrey P. Koplan, Director, CDC regarding the current CDC Director's priorities with a focus on selected CDC programs including Immunizations, Prevention Research, and Tobacco.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 3, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–17448 Filed 7–10–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1280]

Medical Devices; Exemptions From Premarket Notification; Class II Devices: Triiodothyronine Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a notice announcing that it has received a petition requesting exemption from the premarket notification requirements for the total triiodothyronine test system class II device (special controls). FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by August 10, 2000.

ADDRESSES: Submit written comments on this notice to the Docket Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of the FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142). In the **Federal Register** of November 3, 1998 (63 FR 59222), FDA published a final rule codifying these exemptions.

Section 510(m)(2) of the act provides that, 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify ''159'' when prompted for the document shelf number.

III. Petition

FDA received the following petition requesting an exemption from premarket notification for class II devices:

Abbott Laboratories, *Total triiodothyronine test system*, 21 CFR 862.1710.

IV. Comments

Interested persons may submit to the Docket Management Branch (address above) written comments regarding this petition by August 10, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 28, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–17389 Filed 7–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00N–0504]

Egg Safety; Current Thinking Papers on Egg Safety National Standards; Notice of Availability; Public Meeting

[Docket No. 98–045N4]

AGENCIES: Food and Drug Administration, HHS; Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and announcement of public meeting.

SUMMARY: The Food and Drug Administration (FDA) and the Food

Safety and Inspection Service (FSIS) are announcing the availability of the agencies' current thinking papers on national standards for egg safety. The documents discuss approaches to the production of shell eggs, processing and packaging of shell eggs and egg products, and retail sale of shell eggs, including immediate consumption, such as at a restaurant, intended to reduce the risk of consumer exposure to *Salmonella enteritidis* (SE). The current thinking papers represent the agencies' current views on approaches to ensure egg safety from farm to table. FDA and FSIS are also announcing a joint public meeting to be held to discuss the current thinking papers.

DATES: The current thinking papers will be presented and distributed at a public meeting on July 31, 2000. The public meeting will be held on Monday, July 31, 2000, from 8 a.m. to 5 p.m. Submit written comments no later than August 14, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn—Washington, DC on the Hill, 415 New Jersey Ave. NW., Washington, DC 20001, 202–638–1616.

After the meeting, the current thinking papers on egg safety national standards will be available on the Internet at www.foodsafety.gov, or from Tammy O'Conner, USDA/FSIS/OPPDE/RDAD, rm. 112, Cotton Annex Bldg., 300 12th St. SW., Washington, DC 20250–3700, FAX 202–205–0381, or FDA's Center for Food Safety and Applied Nutrition Outreach and Information Center, FAX 877–366–3322.

Transcripts and summaries of the meeting will be available at the Dockets Management Branch (HFA–305), FDA, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *To register for the meeting:*

Sally Fernandez, FSIS, 202–501–7251 or FAX 202–501–7615. When registering please provide name, title, firm name, address, telephone, and fax number. When registering, please indicate if you would like to make a presentation during the meeting. Time allotted for each presentation will be approximately 5 minutes for each participant, but will depend on the number of people participating. If you require a sign language interpreter or other special accommodations, please notify Ms. Fernandez 7 days before the meeting.

For general information regarding the meeting or the Egg Safety Action Plan: Nancy Bufano, FDA, 202–401–2022, FAX 202–205–4422, or e-mail: nancy.bufano@cfsan.fda.gov; Alice Thaler, FSIS, 202–690–2683, FAX 202–720–8213; or Martha Workman, FSIS, 202–720–3219, FAX 202–690–0824.

SUPPLEMENTARY INFORMATION:

I. Background

The President's Council on Food Safety was established in August 1998 to improve the safety of the food supply through science-based regulation and well-coordinated inspection, enforcement, research, and education programs. The Council on Food Safety was charged with developing a comprehensive long-range strategic plan that can be used to set priorities, improve coordination and efficiency, identify gaps in the current system, recommend ways to fill those gaps, enhance and strengthen prevention and intervention strategies, and identify or develop measures to show progress.

The Council has identified egg safety as one component of food safety that warrants immediate Federal, interagency action. In July 1999, FDA and FSIS committed to developing an action plan to address the presence of SE in shell eggs and egg products using a farm-to-table approach.

As part of this action plan, FDA and FSIS held a public meeting on August 26, 1999, to obtain stakeholder input on draft goals, as well as to further develop objectives and action items. The Egg Safety Action Plan, announced by the President on December 11, 1999, was developed, in part, from the input received at the meeting. The Egg Safety Action Plan is available on the Internet at www.foodsafety.gov or from the general information contact persons above.

The information shared at the public meeting and during the comment period following the public meeting will be considered prior to any further actions by the agencies. The agencies may hold additional public meetings, as appropriate, to discuss other issues, including strategies to ensure effective and efficient interactions between State and Federal governments.

II. Decision to Make Current Thinking Papers Available for Comment

On March 30, 2000, and April 6, 2000, the agencies held public meetings in Columbus, OH, and Sacramento, CA, respectively, to solicit and discuss information related to the implementation of the Egg Safety Action Plan and to gather information for reducing or eliminating the risk of SE in eggs. Transcripts from both meetings are available on the Internet at www.foodsafety.gov or from FDA's Dockets Management Branch (address above), at a cost of 10 cents per page. The summaries of the public meetings are also available for public examination at FDA's Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Based on verbal comments received at the meetings, written comments received subsequent to the meetings, and the desire to promote public participation in the implementation of the Egg Safety Action Plan, FDA and FSIS decided to publish this notice of availability of the agencies' current thinking papers in the **Federal Register**.

The current thinking papers represent the agencies' current views on approaches to ensure egg safety from farm to table. FDA and FSIS are soliciting public comment on these documents to obtain views as to whether the agencies are implementing the Egg Safety Action Plan in a way that will best achieve its public health goals.

III. Opportunity for Public Meeting

The agenda for the public meeting will address the following segments of the farm-to-table egg safety continuum: (1) On-Farm Production, (2) Packer/Processor, and (3) Retail. The agenda will also provide for discussion of economics issues, as well as small business and consumer perspectives.

Attendees are encouraged to present their comments, concerns, and recommendations on any of these topics at the public meeting. Attendees wishing to make a presentation must indicate such when registering.

Individuals and organizations that do not preregister to make a presentation may have the opportunity to speak if time permits. A transcript of the proceedings of the public meeting, as well as all information and data submitted voluntarily to FDA and FSIS during the public meeting to discuss the current thinking papers, will become part of the administrative record and will be available to the public under 21 CFR 20.111 from FDA's Dockets Management Branch (address above).

While oral presentations from specific individuals and organizations will be limited during the public meeting, the written comments submitted as part of the administrative record may contain a discussion of any issues of concern. All relevant data and documentation should be submitted with the written comments.

IV. Additional Public Notification

Public awareness of and involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the

notice and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office at 202–720–5704.

V. Public Dockets and Submission of Comments

The agencies have established public dockets to which comments may be submitted. Comments should be directed either to FSIS, Docket No. 98–045N4, or to FDA, Docket No. 00N–0504, or to both dockets for consideration by both agencies. All comments must include the appropriate docket number found in brackets in the heading of this document. Submit written comments in triplicate to: (1) USDA/FSIS Docket Clerk, 300 12th St. SW., rm. 102, Cotton Annex, Washington, DC 20250-3700, or (2) FDA's Dockets Management Branch (address above). You may also send comments to Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or via the FDA Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm.

VI. Meeting Summary

A summary of the proceedings of the public meeting will be posted on the Internet at www.foodsafety.gov. This website is a joint FDA, USDA, and Environmental Protection Agency food safety home page. It is linked to each agency for persons seeking additional food safety information. A summary of the proceedings of the public meeting may also be requested in writing from FDA's Dockets Management Branch (address above) approximately 30 business days after the meeting, at a cost of 10 cents per page. The summary of the public meeting will be available for public examination at FDA's Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 5, 2000.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation, Food and Drug Administration.

[FR Doc. 00–17494 Filed 7–10–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–730 & 182]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Employee Building Pass Application and File;

Form No.: HCFA–730 & 182 (OMB# 0938-NEW);

Use: The purpose of this system and the forms are to control United States Government Building Passes issued to all HCFA employees and non-HCFA employees who require continuous access to HCFA buildings in Baltimore and other HCFA and HHS buildings;

Frequency: Other; as needed;

Affected Public: Federal Government, and Business or other for-profit;

Number of Respondents: 150;

Total Annual Responses: 150;

Total Annual Hours: 37.50.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 28, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–17477 Filed 7–10–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish And Wildlife Service

Endangered and Threatened Species: Incidental Take Permits—Houston Toad

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 5.087-Acre Lot 41, Section 1 in the KC Estates Subdivision, Bastrop County, Texas (Bush).

SUMMARY: Anthony V. Bush (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–029602–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result

of the construction and occupation of one single family residence on 0.5 acres of the 5.087-Acre Lot 41, Section 1 in the KC Estates Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 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, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029602–0 (Bush) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Anthony V. Bush plans to construct a single family residence on 0.5 acres of the 5.087-Acre Lot 41, Section 1 in the KC Estates Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17449 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species: Incidental Take Permits—Houston Toad

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 acres of the 1.7-acre Lots 9 and 10 in the Pine Forest Subdivision, Bastrop County, Texas (Decker).

SUMMARY: Douglas and Julie Decker (Applicants) have 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 Applicants have been assigned permit number TE–028087–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 1.7-acre Lots 9 and 10 in the Pine Forest Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 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, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Dianne Lee, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–028087–0 (Decker) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Dianne Lee at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Douglas and Julie Decker plan to construct a single family residence on 0.5 acres of the 1.7-acre Lots 9 and 10 in the Pine Forest Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17450 Filed 7–10–00; 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 an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 Acres of the 1.0-acre Lot 1 in the Royal Pines Subdivision, Bastrop County, Texas (Schena)

SUMMARY: Sherry Schena (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an

incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–029608–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 1.0-acre Lot 1 in the Royal Pines Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 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, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029608–0 (Schena) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Sherry Schena plans to construct a single family residence on 0.5 acres of the 1.0-acre Lot 1 in the Royal Pines Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $4,000 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17451 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 acres of the 4.877-acre Reserve Lot, Block 1, Phase III in the Pine Forest Subdivision, Bastrop County, Texas (Russo)

SUMMARY: Joseph and Sylvia Russo II (Applicants) have 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 Applicants have been assigned permit number TE–029605–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 4.877-acre Reserve Lot, Block 1, Phase III in the Pine Forest Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before August 10, 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, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Dianne Lee, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–029605–0 (Russo) when submitting comments.

FOR FURTHER INFORMATION CONTACT: Dianne Lee at the above U.S. Fish and Wildlife Service Office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Joseph and Sylvia Russo II plan to construct a single family residence on 0.5 acres of the 4.877-acre Reserve Lot, Block 1, Phase III in the Pine Forest Subdivision, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Dom Ciccone,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–17452 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–830–1030–XP–24 1 A]

OMB Approval Number 1004–NEW; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On March 17, 2000, BLM published a notice in the **Federal Register** (65 FR 14610) requesting comments on this proposed collection. The comment period ended May 16, 2000. BLM received one comment from the public in response to that notice. Copies of the proposed collection of information and related surveys and explanatory material may be obtained by contacting the BLM Information Clearance Officer at (202) 452–5033.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: BLM's Generic Customer Satisfaction Surveys for Stakeholders and Partners and State and Local Governments, OMB Approval Number: 1004–NEW

Abstract: BLM is proposing a new information collection for determining the satisfaction of its stakeholders, partners, and state and local governments with its programs and services. A currently approved collection (1004–0181) covered all survey instruments, both customer comment cards and telephone surveys, and the use of focus groups to determine what questions to ask and comments to solicit. The new collection will concern only customer-specific programs not included in 1004–0181. The anticipated programs/customers for survey are state and local governments and stakeholders and partners. These data will be used to identify: (1) service needs of customers, (2) strengths and weaknesses of services, (3) ideas or suggestions for improvement of service from BLM customers, (4) barriers to achieving customer service standards, and (5) changes to customer service standards.

Bureau Form Number: Not applicable.

Frequency: Once every other year.

Description of Respondents: Stakeholders are indirect customers that represent BLM's direct customers and are key to assessing service quality and include environmental, business and other community organizations and Resource Advisory Councils (RAC's), advisory groups. State and local government officials are statewide executive agencies, statewide elected or appointed officials, and local and community elected officials.

Annual Responses: 1720.

Bureau Burden Hours: 430 or 0.25 hours (15 minutes) per response.

Information Clearance Officer: Shirlean Beshir, 202–452–5033.

Dated: June 16, 2000.

Shirlean Beshir,

BLM, Information Clearance Officer.

[FR Doc. 00–17463 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–99–2822–00–D889]

Closure and Restriction Orders

AGENCY: Bureau of Land Management, (BLM) Interior.

ACTION: Implement an emergency closure of certain public lands in the Juniper Flats area, San Bernardino County, California.

SUMMARY: In a previous **Federal Register** Notice, Public lands in the Juniper Flats area were closed to human entry. Approximately 16,000 acres burned in the Willow fire were closed from October 17, 1999 to July 1, 2000. The closed area is not to be entered by any means of access unless addressed by the closure described below. This closure exempts human access (mechanized, motorized, equestrian, foot) within the confines of routes signed as open. No travel of any kind is authorized other than on these signed open routes. This closure also exempts non-mechanized access on the signed trail leading from the southernmost portion of the Bowen Ranch property, across BLM land, referred to as the ''upper parking lot'', to the Forest Service trailhead, referred to as the ''lower parking lot'', which leads to the Deep Creek Hot Springs.

DATES: This closure goes into effect at 8 a.m. on Saturday, July 1, 2000 and shall remain in effect until 8 a.m. on Saturday, June 30, 2001, unless non-compliance dictates an entire closure.

FOR FURTHER INFORMATION CONTACT: Tim Read, Barstow Field Office Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, CA 92311; or call (760) 252–6000.

SUPPLEMENTARY INFORMATION: On Saturday, August 28, 1999, the Willow Fire started on U.S. Forest Service lands adjacent to BLM lands in the Juniper Flats area. The fire burned 63,486 acres, including approximately 16,000 acres of BLM land. Natural resources comprising the local ecosystems were extensively damaged by the fire. The affected public land has been closed to human entry since the fire, with the exception of foot travel on the hiking trail from Bowen Ranch to the Forest Service Trail leading to the Deep Creek Hot Springs. Although the landscape remains barren in many locations, treatments have been completed on several routes, including the installation of open route signs which should guide visitors over a temporary designated network of routes. This closure still allows for non-mechanized access on the trail leading to the Deep Creek Hot Springs. The trail is well marked and is located in T.3N. R.3W. Section 11. This closure also allows human, equestrian, mechanized, and motorized travel within the confines of signed open routes.

In general, the closed public lands are east of Deep Creek Road, south of the Atchison Topeka and Sante Fe rail lines, west of California Highway 18, and north of Deep Creek. The authority for this closure is 43 CFR 8364.1, 18 U.S.C. 3571. This closure only applies to those portions of the following sections burned during the Willow Fire: San Bernardino Base and Meridian, T.3N. R1W. sections 2, 3, 4, 5, 6; T.3N. R.2W. sections 1, 2, 3, 4, 5, 6, 7 and 8; T.3N.

R3W. sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; T.4N. R.1W. sections 31 and 32; T.4N. R.2W. sections 26, 27, 28, 29, 31, 32, 33, 34 and 35; T.4N. R.3W. sections 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 35. Failure to comply with this closure order may result in a fine up to $100,000.00 or imprisonment up to 12 months, or both.

The only exemptions to this closure include the following activities: Law enforcement, emergency services, government business, or work to maintain utilities and infrastructure. Other specific exemptions may be permitted by the BLM Authorizing Officer.

Harold Johnson,

Acting Field Manager, BLM, Barstow Field Office.

[FR Doc. 00–17392 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–00–7122–EA–8829]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the operation of the Score International 2000 Las Vegas Primm 300 Desert Race.

SUMMARY: The District Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the Score International 2000 Las Vegas Primm 300 Desert Race and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 am August 4, 2000 through 9:00 pm August 5, 2000 Pacific Standard Time.

Closure Area: Public lands within as described below, an area with T. 23 S. to T. 27 S.R. 59 E. to R. 61 E.

1. The closure is a triangle shaped area bound by Interstate I–15 (between Sloan and State line) on the west; the crest of the McCullough Mountains on the east; and the California/Nevada State line on the south.

Exceptions to the closure area are: State Route 163, Old Las Vegas Blvd.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owner's expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor. Maps are available at the Las Vegas Field Office.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340 subpart 8341; 43 CFR 8360, subpart 8364.1 and 43 CFR 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Donn Siebert, Acting Recreation Manager or Ron Crayton, BLM Law Enforcement Ranger, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: June 29, 2000.

Mark Morse,

Las Vegas Field Office Manager.

[FR Doc. 00–17393 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–1220–DC; GP0–0260

John Day River Proposed Management Plan, Two Rivers and John Day Resource Management Amendments and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Central Oregon Field Office, Prineville District, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1506.6(2) notice is hereby given that the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the John Day River Proposed Management Plan, Two Rivers and John Day Resource Management Amendments. This plan area covers designated Wild and Scenic Rivers on the lower Mainstem and South Fork of the John Day River and BLM managed

lands on the Mainstem, South, Middle, and North Forks of the John Day River not designated Wild and Scenic in several counties in the North Eastern portion of Oregon.

Interested citizens not already on the mailing list may review the Final EIS via the internet on the Prineville BLM website at http://www1.or.blm.gov/Prineville/. A hardcopy or a CDROM of the EIS may be requested from the Prineville District by calling (541) 416–6700.

The planning process includes an opportunity for an administrative review of the plan amendment. If you believe approval of any provision of this proposed planning amendment would be in error, you may submit a plan protest to the Bureau of Land Management (BLM) Director (43 CFR 1610.52). Careful adherence to these guidelines as summarized below, will assist in preparing a protest that will assure consideration of your point of view.

Only those persons or organizations that participated in the planning process leading to this plan amendment may protest. If our records indicate that you had no involvement in any state in the preparation of this document, your protest will be dismissed without further review. Further, a protesting party may raise only those issues that he or she submitted for the record during the planning process.

To be considered timely, your protest must be postmarked no later than the last day of the protest period. Also, although not a requirement, we suggest that you send your protest by certified mail, return receipt requested.

Protest must be filed in writing to: Director, (WO–210), Bureau of Land Management, US Department of the Interior, Attn; Brenda Williams, 1849 C Street, NW., Washington, D.C. 20240.

To be considered complete, your protest must contain, at a *minimum*, the following information:

- Name, mailing address, telephone number, and the affected interest of person filing the protests.
- A statement of the issue or issues being protested.
- A statement of the part or parts of the planning amendment being protested. To the extent possible, reference specific pages, paragraphs. And sections of the document.
- A copy of all document addressing the issue or issues were discussed with BLM for the record.
- A concise statement explaining why the proposed decision is believed to be incorrect.

This is a critical part of your protest. Document all relevant facts. As much as possible, reference or cite the planning and environmental analysis documents. A protest that merely expresses disagreement with the State Director's proposed decision, without any data will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data.

DATES: The BLM will make a decision on the Management Plan and Resource Management Plan Amendments after review of protests (if any) that must be filed within 30 days of the Notice of Availability published by the EPA in the FR or by August 14, 2000, whichever is later.

FOR FURTHER INFORMATION CONTACT: Michael Williams, Prineville BLM at (541) 416–6862 or Dan Wood, Prineville BLM at (541) 416–6751.

SUPPLEMENTARY INFORMATION: As required by the Wild and Scenic Rivers Act of 1969 as amended in 1982 and 1987, 16 U.S.C. 12749(d), and by 40 CFR 1502.3 the BLM has examined a Range of Alternatives for managing the segments of the North Fork and lower mainstream of the John Day River that Congress Designated Wild and Scenic. In addition to this plan includes proposed decisions for managing public lands adjacent to the John Day River and its major tributaries that have not been designated Wild and Scenic but could influence the outstandingly remarkable values associated with the designated segments.

The proposed John Day River Management Plan and Final Environmental Impact Statement considered at least five alternatives for managing various resources and programs along over 200 river bank miles of the John Day River System. The John Day River is one of the longest free flowing river systems in the continental United States. The John Day watershed is located in the northeastern Oregon and encompasses all or portions of eleven counties, six of which would be directly affected by the proposed plan. This document has divided the John Day River system into 11 different segments for management purposes. Congress designated six of these segments (totaling 248.6 miles) as Wild and Scenic in 1988. This legislation also mandated a management plan be written in cooperation with the State of Oregon and affected native American Tribes. Consequently, this plan was written as a cooperative effort between the following agencies, and groups, collectively, known as the ''partners'': BLM, State of Oregon, Confederated Tribes of Warm Springs Reservation of Oregon USDI Bureau of Indian Affairs and John day River Coalition of Counties (Gilliam, Grant, Jefferson, Sherman, Wasco, and Wheeler Counties).

A draft of this document was released for a 90 day public review and comment period on December 3, 1999. Comments received helped the partners develop the proposed decisions in this plan. Major issues addressed by this plan include livestock grazing, boating use levels, commercial services, motorized boating, and public agricultural lands and related water use. Many other issues are also addressed by this plan and proposed decisions are made for each issue. They are displayed with alternatives considered. Alternative A describes the existing management situation for each resource of use (no action). The other alternatives were designed to protect and enhance the outstanding remarkable values which Congress identified for the designated Wild and Scenic segments and to protect and enhance similar river values for certain non-designated segments. Chapter IV of this document presents rulemaking by the State of Oregon for the State Scenic Waterway segments of the John Day River, most of which overlaps with designated Wild and Scenic Segments.

This proposed plan describes certain restrictions on each livestock grazing allotment along the segments designated Wild and Scenic and certain segments not so designated where they are situated in a way that directly affects the designated segments. Boating use levels and motorized boating restrictions, which vary by river segment, are proposed. Short and long-term strategies for management of commercial outfitter and guide permits are proposed for the river. Several small tracts of BLM administered irrigated agricultural lands are to be converted from commercial use to provide wildlife habitat and native vegetation. Any decisions which reallocate land uses or change major resource allocations would also amend or revise the BLM's Two Rivers and John Day Resource Management Plans under 43 CFR 1610.5–5 or 5–6.

Dated: June 30, 2000.

Donald L. Smith,

Acting Prineville District Manager.

[FR Doc. 00–17480 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–00–1220–00; GPO–0271]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, August 3, 2000 from 8:00 a.m. to 4:00 p.m. in the Library Room at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon. At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 11:00 a.m. to 11:15 a.m., August 3, 2000. Topics to be discussed are the Strategic Plan Update and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 8:00 a.m. and run to 4:00 p.m. August 3, 2000.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail Interpretive Center, P.O. Box 987, Baker City, OR 97814 (Telephone 541–523–1845).

Juan Palma,

District Manager.

[FR Doc. 00–17394 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–XQ]

Resource Advisory Council Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River District Resource Advisory Council (RAC) will be held as indicated below. The primary agenda item for this meeting will be a field trip to the Pleasant View Allotment that will give RAC members a better understanding of the application of Standards for Rangeland Health and Guidelines for Grazing Management. Other agenda items may be added between publication of this notice and the meeting. All meetings are open to the public. The public may present written or oral comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meetings is listed below. Depending on the number of persons wishing to comment, and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

DATES AND TIMES: The next meeting will be held Friday, August 4, 2000. The meeting will start at the BLM's Pocatello Field Office, 1111 8th Avenue in Pocatello, Idaho, beginning at 9 a.m. The field trip to the Pleasant View Allotment will begin shortly after the meeting convenes public comments, if any, are presented. The meeting is scheduled to end at about 4 p.m.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: June 22, 2000.

James E. May,

Upper Snake River District Manager.

[FR Doc. 00–17481 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–00–14; AZA–30895, AZA–30896, AZA–30897]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of May 27, 1999, concerning a R&PP Classification in Mohave County, Arizona. The document contained an incorrect section number in the legal description.

FOR FURTHER INFORMATION CONTACT: Laurie Ford, Realty Specialist, (435) 688–3271.

Correction

In the **Federal Register** of May 27, 1999, in FR Doc. 64–102, on page 28832, the second section of the legal description should read section 10 instead of section 9 as follows:

Sec. 10, NE¼NE¼NW¼NE¼ (2.5 acres for a fire station).

Dated: June 26, 2000.

Roger G. Taylor,

Field Manager.

[FR Doc. 00–17483 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM050–1150PG]

Intent To Prepare Resource Management Plan Amendment (RMPA), Socorro Field Office (SFO), Socorro, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The BLM, SFO is proposing to amend the Resource Management Plan (RMP) to change oil and gas leasing stipulations on 229,500 acres within Socorro County. The areas proposed for stipulation changes include critical habitats for the state endangered desert bighorn sheep, designated Areas of Critical Environmental Concern (ACEC), and designated Special Management Areas (SMA).

DATES: Comments should be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Socorro Field Manager, 198 Neel Avenue, Socorro, New Mexico, 87801.

FOR FURTHER INFORMATION CONTACT: David L. Heft, Wildlife Biologist, or Jon Hertz, Assistant Field Manager, at (505) 835–0412.

SUPPLEMENTARY INFORMATION: The Socorro RMP was completed in August 1989. The Ladron Mountain ACEC was identified at that time as a site for future reintroduction of the state endangered desert bighorn sheep. Desert bighorn sheep were reintroduced into the ACEC in 1992. The current population is approximately 35 individuals. The New Mexico Department of Game and Fish completed a habitat evaluation of potential reintroduction sites for desert

bighorn in New Mexico in 1991 with an update in 1994. This evaluation also identified the Devil's Backbone area in the southern portion of the Magdalena Mountains in Socorro County as historic and suitable habitat for the reintroduction of desert bighorn sheep. This area is approximately 38 miles south of the reintroduction site in the Ladron Mountain ACEC. Bighorn sheep movements have been confirmed to within 8 miles of the Devil's Backbone area from the Ladron herd. The connecting corridor between the two primary habitat sites is composed of the Polvadera Mountains, Socorro Mountain, and Chupadera Mountains.

Requests for public comment on probable impacts to bighorn sheep and their habitat from oil and gas leasing activities were sent to approximately 260 public entities composed primarily of industry constituents. Responses were received from the state wildlife agency and interested members of the public identifying potential negative impacts to bighorn sheep and their habitat from these activities. The New Mexico Bureau of Mines commented that the potential for oil and gas resources in the proposed action area was very low. A comment pertaining to the cultural importance and concern for conservation of bighorn sheep was received from the Navajo Nation. No comments were received from the oil and gas industries.

Any comments of substance received during the 90-day comment period will be incorporated into the environmental analysis. The resultant analysis of oil and gas leasing and associated activities such as geophysical exploration has determined that these activities can have detrimental impacts to the habitat for desert bighorn sheep. The protection of these areas has become even more critical with the recent listing as federally endangered of small isolated populations of bighorn sheep on public lands in California. The New Mexico statewide population of free ranging desert bighorn sheep is estimated to only number 220 animals at this time.

The vulnerability of small fragmented populations of desert bighorn sheep was recently demonstrated by the listing as federally endangered of the peninsular population in southern California in March 1998 by the United States Fish and Wildlife Service. This population at the time of listing was estimated to number 280 individuals. In order to preclude the potential future listing of the New Mexico population as much as possible, the SFO is pro-actively managing identified habitat areas within its jurisdiction to provide maximum protection and enhancement of those habitats. The Ladron Mountain/Devil's Backbone complex has the potential to support a long term viable population of more than 100 individuals if habitat suitability is maintained. Protection and enhancement of this habitat can also assist in the potential state delisting of this species.

Dated: June 30, 2000.

Kate Padilla,

Field Manager.

[FR Doc. 00–17482 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–MW–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; N–66363]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice temporarily segregates 160,529.76 acres of Federal lands and 15,813.12 acres of federally reserved minerals, while various studies and analyses are made to support a final decision to withdraw the land for protection of resources for a 20-year period. This notice closes the Federal lands to surface entry, except for conveyance under section 206 of Federal Land Policy and Management Act of 1976 or the Recreation and Public Purposes Act of 1926, and mining, but not to mineral leasing for up to 1 year. This notice closes the federally owned minerals to mining, but not to mineral leasing for up to 1 year. In addition, any non-Federal lands acquired through exchange, donation or purchase within the boundaries of the described plan area would be closed to surface entry and mining during the 1-year period. This segregation does not affect valid existing rights.

The Carson City Field Office of the Bureau of Land Management proposes to amend the Lahontan Resource Management Plan to address future management of these same lands. The resource management plan amendment process will serve as the basis for decisions on resource protection and development and the need for a withdrawal. The Bureau of Land Management and Washoe County are cooperating in the preparation of this resource management plan amendment.

DATES: Comments should be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520 or the Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–785–6532 or Jo Ann Hufnagle, BLM Carson City Office, 775–885–6000.

SUPPLEMENTARY INFORMATION: On July 6, 2000, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described Federal lands and non-Federal lands from surface and mineral entry:

Federal Lands

Mount Diablo Meridian

T. 20 N., R. 18 E.,
- Sec. 2, lots 1 to 4, inclusive, S½N½ (that portion north of the south boundary of R/W Nev–042776 for U.S. Highway 395).

T. 21 N., R. 18 E.,
- Sec. 4, lots 1 to 4, inclusive, S½NW¼, and SW¼;
- Sec. 6, lots 11 to 14, inclusive;
- Sec. 7, lots 9 to 12, inclusive;
- Sec. 8;
- Sec. 10;
- Sec. 12, N½, NW¼SW¼, S½SW¼, and SW¼SE¼;
- Sec. 14;
- Sec. 18, lots 9 to 12, inclusive;
- Sec. 22;
- Sec. 26, lots 1 and 2, W½NW¼NE¼, NW¼, N½SW¼, and W½SE¼;
- Sec. 27, W½NE¼, N½NW¼, and SE¼NW¼;
- Sec. 34, NE¼, E½NW¼, E½W½NW¼, SW¼SW¼NW¼, N½N½SW¼, and N½SE¼, (those portions north of the south boundary of R/W Nev-042776 for U.S. Highway 395).

T. 22 N., R. 18 E.
- Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 4, lots 5 to 20, inclusive;
- Sec. 5, lots 5 to 8, inclusive, S½N½, and S½;
- Sec. 6, lots 3 to 6, inclusive;
- Sec. 8, lots 1 to 12, inclusive, and SW¼;
- Sec. 9 to 11, inclusive;
- Sec. 12, W½;
- Sec. 13, W½;
- Sec. 14, lots 1 to 8, inclusive, and W½;
- Sec. 15 to 17, inclusive;
- Sec. 18, lots 1 to 4, inclusive;
- Sec. 20, lots 1 to 8, inclusive, and S½;
- Sec. 21;
- Sec. 22, lots 1 to 4, inclusive, NE¼, and S½;
- Sec. 23;
- Sec. 24, lots 1 to 4, inclusive, and SW¼;
- Sec. 25, W½;
- Sec. 26 to 29, inclusive;
- Sec. 30, lots 1 to 4, inclusive;

Sec. 31, lots 3 to 7, inclusive;
Sec. 32, lots 1 to 6, inclusive, E½, E½NW¼, NE¼SW¼, and S½SW¼;
Sec. 33;
Sec. 34, lots 1 to 8, inclusive, and N½;
Sec. 35;
Sec. 36, lots 1 to 8, inclusive.

T. 23 N., R. 18 E.
Sec. 7, lots 2 to 4, inclusive;
Sec. 8, lots 2 to 7, inclusive, SW¼NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 9, lots 1 to 4, inclusive;
Sec. 12, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, and E½SW¼;
Sec. 13, lots 1 to 10, inclusive, E½NW¼, and SW¼SW¼;
Sec. 16, lots 1 to 10, inclusive, and E½SE¼;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive;
Sec. 19, lots 1 to 4, inclusive;
Sec. 20;
Sec. 21, lots 1 to 10, inclusive, and NE¼NE¼;
Sec. 22, SE¼SW¼, and SE¼;
Sec. 24, lots 1 to 6, inclusive, W½NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 25;
Sec. 26, lots 1 to 4, and SE¼NE¼;
Sec. 27, NE¼, E½NW¼, and S½;
Sec. 28, lots 1 to 12, inclusive, W½NE¼, and SE¼NE¼;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive;
Sec. 31, lots 1 to 4, inclusive;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 12, inclusive, and SE¼;
Sec. 34, lots 1 to 7, N½, and SW¼SE¼;
Sec. 35, lots 1 to 6, inclusive, and NE¼;
Sec. 36, lots 1 to 8, inclusive, and N½.

T. 17 N., R. 19 E.,
Sec. 12, lots 1 and 2, NE¼, E½NW¼, S½SW¼, and N½SE¼.

T. 20 N., R. 19 E.,
Sec. 1, W½ lot 1 in NE¼, lot 2 in NE¼, lots 1 and 2 in NW¼;
Sec. 2, lots 1 and 2 in NE¼, lots 1 and 2 in NW¼, and S½;
Sec. 4, S½SW¼;
Sec. 10, NW¼NE¼, and N½NW¼;
Sec. 12;
Sec. 24, lots 1 and 4 to 8, inclusive, W½NE¼, E½SW¼, and W½SE¼.

T. 21 N., R. 19 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 8, N½NE¼, SE¼NE¼, and E½SE¼;
Sec. 10;
Sec. 11, SW¼NE¼, W½NW¼, NE¼SW¼, and W½SE¼;
Sec. 12;
Sec. 13;
Sec. 14; N½;
Sec. 16, N½, and SE¼;
Sec. 22, SW¼;
Sec. 24, SE¼NW¼, and SW¼;
Sec. 25;
Sec. 26, E½NE¼, and NE¼SE¼;
Sec. 28, NE¼, N½SE¼, and SE¼SE¼;
Sec. 36.

T. 22 N., R. 19 E.,
Sec. 1, lots 3 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 2 to 4, inclusive;
Sec. 4, lots 1 to 11, inclusive, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 9, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 10;
Sec. 12;
Sec. 14, SE¼SW¼;
Sec. 15, W½;
Sec. 16, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 22;
Sec. 24;
Sec. 26, NE¼, NE¼NW¼, N½SE¼, and SW¼SE¼;
Sec. 36.

T. 23 N., R. 19 E.,
Sec. 1, S½;
Sec. 2, S½;
Sec. 3, S½;
Sec. 4, S½;
Sec. 5, S½;
Sec. 6, lots 6 to 7, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8 to 17, inclusive;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 33, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 34, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 35, N½;
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.

T. 16 N., R. 20 E.,
Sec. 1, E½ of lot 2 in NE¼, and lot 3;
Sec. 2, lots 1 and 2 in the NE¼, lots 1 and 2 in NW¼, N½S½, and S½SW¼;
Sec. 3, lot 2 in NE¼, and lot 2 in NW¼;
Sec. 4, lots 1 and 2 in NE¼, and S½;
Sec. 10;
Sec. 11, N½NE¼NE¼, and SE¼NE¼NE¼;
Sec. 14, irregular Washoe County portion within W½W½;
Sec. 16, SE¼SE¼;
Sec. 20, E½, E½SW¼, and SW¼SW¼;
Sec. 30, lot 1 in NW¼, S½ of lot 2 in NW¼, lots 1 and 2 in SW¼, and E½.

T. 17 N., R. 20 E.,
Sec. 1, lot 2 in NE¼, lot 2 in NW¼, and SW¼SE¼;
Sec. 2, E½ of lot 1 in NE¼, lot 2 in NE¼, W½ of lot 1 in NW¼, lot 2 in NW¼, SW¼, and W½SE¼;
Sec. 8, E½, SE¼NW¼, NE¼SW¼, and S½SW¼;
Sec. 10, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 12, E½, S½NW¼, and SW¼;
Sec. 14;
Sec. 16;
Sec. 18, E½E½, E½NE¼SW¼, NE¼SE¼SW¼, E½NE¼NW¼SE¼, E½NW¼NW¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, and S½SW¼SE¼;
Sec. 20, lots 1 and 2, N½, N½S½, SW¼SW¼, and SE¼SE¼;
Sec. 21, SW¼NW¼SW¼, and NW¼SW¼SW¼;
Sec. 22;
Sec. 24;
Sec. 25, S½NE¼, and SE¼;
Sec. 26;
Sec. 28;
Sec. 29, lots 2 and 3;
Sec. 30, N½ of lot 1 in SW¼; and E½;
Sec. 32, N½N½, SE¼NE¼, SW¼NW¼, and E½SE¼;
Sec. 33, SW¼SW¼;
Sec. 34, lots 1 and 2, N½, SW¼, and W½SE¼;
Sec. 35, lots 1 and 2, N½, E½SW¼, and SE¼;
Sec. 36, lots 1 to 16, inclusive.

T. 18 N., R. 20 E.,
Sec. 4, lots 5 and 6;
Sec. 26, SW¼SW¼;
Sec. 28, SW¼SW¼;
Sec. 33, NE¼NW¼;
Sec. 34, E½NW¼SE¼NE¼, S½SE¼NE¼, E½NW¼SW¼NW¼, W½SE¼SW¼NW¼, NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, N½N½NE¼SE¼, N½SW¼NE¼SE¼, S½SE¼NE¼SE¼, W½SW¼SW¼SE¼, W½SE¼SW¼SW¼SE¼, E½E½SE¼SW¼SE¼, NE¼NE¼SE¼SE¼, W½SE¼SE¼, and S½SE¼SE¼SE¼.

T. 19 N., R. 20 E.,
Sec. 12, SE¼SW¼, and SW¼SE¼;
Sec. 14, SE¼NE¼, and SE¼;
Sec. 32, SE¼NE¼, S½S½NE¼SE¼, and S½SE¼;
Sec. 34, W½NW¼NW¼NE¼NE¼, S½NW¼NE¼NE¼, W½SW¼NE¼NE¼, SE¼NE¼NE¼, E½NE¼NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, W½NE¼NW¼NE¼, E½NW¼NW¼NE¼, S½NW¼NE¼, NE¼NE¼SW¼NE¼, E½NW¼NE¼SW¼NE¼, S½NE¼SW¼NE¼, W½NE¼NW¼SW¼NE¼, W½NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, W½NE¼SW¼SW¼NE¼, W½SW¼SW¼NE¼, SE¼SW¼SW¼NE¼, SE¼SW¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼, N½NW¼, NE¼SE¼NW¼, W½NW¼SE¼NW¼, NE¼SW¼, E½SE¼, NW¼SE¼, and W½SW¼SE¼.

T. 20 N., R. 20 E.,
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 2, 3, and lots 8 to 11, inclusive, SE¼NW¼, E½SW¼, and S½SE¼;
Sec. 7, lots 1, 2, and lots 5 to 9, inclusive, W½NE¼, E½NW¼, NE¼SW¼, and N½SE¼SW¼;
Sec. 8, lot 1;

Sec. 9, SW¼;
Sec. 14, lots 4 to 5, E½SW¼, and SE¼;
Sec. 16, N½NE¼, SW¼NE¼, W½, and NW¼SE¼;
Sec. 20, S½NE¼, E½SW¼, and SE¼;
Sec. 21, lots 3 and 4, and NW¼SW¼;
Sec. 28, lots 15, 16, lots 21 to 24, inclusive, lots 26, 29, and lots 31 to 41, inclusive, SW¼NE¼, SW¼NW¼, and SE¼;
Sec. 29, lots 9 to 15, inclusive, N½NE¼, SE¼NE¼, NE¼SE¼, SW¼SE¼, and all unpatented mining claims.
T. 21 N., R. 20 E.,
Sec. 2, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, NE¼, E½NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 10, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 12, lots 1 and 2;
Sec. 15, lots 3 to 5, inclusive, W½NE¼, E½SE¼NW¼, and NE¼SW¼;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22, lots 2 to 11, inclusive, SE¼NW¼, and NE¼SW¼;
Sec. 28;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 5, inclusive, E½, E½NW¼, and NE¼SW¼;
Sec. 32.
T. 22 N., R. 20 E.,
Sec. 3, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8;
Sec. 9;
Sec. 10, lots 1 to 4, inclusive, lots 8 and 9, SE¼NW¼, and NE¼SW¼;
Sec. 15, W½;
Sec. 16;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20 to 22, inclusive;
Sec. 23, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 26, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 27, lots 2 to 4, inclusive, N½, SW¼, N½SE¼, and all unpatented mining claims;
Sec. 28;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32 to 34, inclusive;
Sec. 35, lots 5 to 7, inclusive, lot 9 and lots 11 to 13, inclusive, W½E½, N½NW¼, and all unpatented mining claims;
T. 23 N., R. 20 E.,
Sec. 7, S½, unsurveyed;
Sec. 8, S½;
Sec. 9, S½, partly unsurveyed;
Sec. 10, S½;
Sec. 11, N½SW¼, SW¼SW¼, and E½SE¼;
Sec. 12, S½;
Sec. 14, S½NW¼, and N½SW¼;
Sec. 15, S½NE¼, W½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 16 to 21, inclusive, unsurveyed;
Sec. 22, lots 2, 3, and lots 5 to 11, inclusive, and SW¼SW¼;
Sec. 27, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 28 to 30, inclusive, unsurveyed;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32;
Sec. 33, lots 1 and 2, W½NE¼, W½, and SE¼;
Sec. 34.
T. 19 N., R. 21 E.,
Sec. 6, lots 1 to 6, inclusive, S½NE¼, and SE¼;
Sec. 8, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 10, N½, N½SW¼, E½NE¼SW¼SW¼, SE¼SW¼SW¼SW¼, SE¼SW¼SW¼, and SE¼SW¼, NW¼SE¼;
Sec. 16, NE¼, N½NW¼, and SE¼NW¼;
Sec. 18, lot 1, and N½NE¼.
T. 20 N., R. 21 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 8,
Sec. 10;
Sec. 12 to 16, inclusive;
Sec. 18, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, W½SE¼, and SE¼SE¼;
Sec. 20 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, and E½;
Sec. 31, lots 1 to 4, inclusive, and E½;
Sec. 32;
Sec. 33, N½;
Sec. 34;
Sec. 35, N½N½, and SE¼NE¼;
Sec. 36, lots 1, 4 and 5, N½, N½SW¼, and NW¼SE¼.
T. 21 N., R. 21 E.,
Sec. 6, lot 7 and SE¼SW¼;
Sec. 7, lot 1 and NE¼NW¼;
Sec. 36.
T. 22 N., R. 21 E.,
Sec. 7, lot 5.
T. 23 N., R. 21 E.,
Sec. 7, lots 3 and 4, E½SW¼, and SE¼;
Sec. 8, N½SW¼, SE¼SW¼, and SE¼;
Sec. 9, N½SE¼, and SW¼;
Sec. 10, NW¼SE¼;
T. 20 N., R. 22 E.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14;
Sec. 16;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22;
Sec. 24, irregular Washoe County portion within W½;
Sec. 26, N½, and N½S½;
Sec. 30, lots 1 to 4, inclusive, NE¼, and E½W½.
T. 21 N., R. 22 E.,
Sec. 32;
Sec. 34;
Sec. 36.
T. 20 N., R. 23 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 18, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 20, N½N½, irregular Washoe County portion within SE¼NW¼.

The areas described aggregate 160,529.76 acres in Washoe County.

Federally Reserved Minerals

T. 22 N., R. 18 E.,
Sec. 12, E½;
Sec. 24, E½;
Sec. 36, E½.
T. 23 N., R. 18 E.,
Sec. 15, NE¼, E½NW¼, and SE¼;
Sec. 16, W½NE¼, and SE¼NE¼;
Sec. 22, NE¼, SE¼NW¼, and NE¼SW¼;
T. 20 N., R. 19 E.,
Sec. 25, lots 1 to 7, inclusive, and lot 11, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼, (those portions north of the south boundary of R/W Nev–042776 for U.S. Highway 395).
T. 21 N., R. 19 E.,
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼.
T. 22 N., R. 19 E.,
Sec. 8;
Sec. 13, SW¼NE¼;
Sec. 14, E½, NW¼, N½SW¼, and SW¼SW¼;
Sec. 18, lots 1 to 4, E½, and E½W½;
Sec. 20;
Sec. 26, W½NW¼, SE¼NW¼, SW¼, and SE¼SE¼;
Sec. 28;
Sec. 30, lots 1 to 4, E½, and E½W½;
Sec. 31, lots 3 and 4, E½SW¼, and SE¼;
Sec. 32;
Sec. 34.
T. 17 N., R. 20 E.,
Sec. 18, lots 3 to 11, inclusive, W½NE¼SW¼, W½SE¼SW¼, SE¼SE¼SW¼, W½NE¼NW¼SE¼, W½NW¼NW¼SE¼, and NW¼SW¼SE¼.
T. 18 N., R 20 E.,

Sec. 4, lots 3 and 4;
Sec. 34, NE¼SE¼NE¼, W½NW¼SE¼NE¼, NE¼SW¼NW¼, W½NW¼SW¼NW¼, SW¼SW¼NW¼, E½SE¼SW¼NW¼, E½SW¼, NE¼NW¼SW¼, S½N½NE¼SE¼, S½SW¼NE¼SE¼, N½SE¼NE¼SE¼, N½SW¼SE¼, NE¼SW¼SW¼SE¼, E½SE¼SW¼SW¼SE¼, W½SE¼SW¼SE¼, W½E½SE¼SW¼SE¼, NW¼NE¼SE¼SE¼, S½NE¼SE¼SE¼, and N½SE¼SE¼SE¼.
T. 19 N., R. 20 E.,
Sec. 2, SE¼SE¼;
Sec. 11, SW¼NE¼;
Sec. 26, W½E½, and W½;
Sec. 32, W½NE¼;
Sec. 34, NE¼NE¼NE¼, NE¼NW¼NE¼NE¼, E½NW¼NW¼NE¼NE¼, E½SW¼NE¼NE¼, W½NE¼NE¼NW¼NE¼, W½NW¼NW¼NE¼, W½NW¼NE¼SW¼NE¼, E½NE¼NW¼SW¼NE¼, E½NE¼SW¼SW¼NE¼, W½W½SE¼NE¼, E½NW¼SE¼NW¼, SW¼SE¼NW¼, and E½SW¼SE¼.
T. 20 N., R. 20 E.,
Sec. 14, lots 1 to 3, inclusive, and SW¼NE¼;
Sec. 26, SW¼SE¼SW¼, and W½SE¼SE¼SW¼;
Sec. 28, E½SE¼SW¼NE¼NW¼, and W½SW¼SE¼NE¼NW¼;
Sec. 29, lot 8, NW¼SW¼, and SE¼SW¼;
Sec. 30, W½NE¼SE¼, N½SW¼SE¼, SW¼SW¼SE¼, and W½SE¼SW¼SE¼;
T. 21 N., R. 20 E.,
Sec. 1, lots 5 to 7, inclusive, and lots 10 to 22, inclusive;
Sec. 2, lot 2, lots 8 to 46, inclusive, SW¼NE¼, NW¼NE¼SE¼, S½NE¼SE¼, W½SE, and N½SE¼SE¼;
Sec. 12, lots 3 to 12, inclusive, and SW¼;
Sec. 13, lots 1 and 4.
T. 22 N., R. 20 E.,
Sec. 10, lots 5 to 7, inclusive, NE¼, and NW¼SE¼;
Sec. 14, lots 5 to 7, inclusive;
Sec. 24, W½W½;
Sec. 36, S½SE¼.
T. 23 N., R. 20 E.,
Sec. 11, SE¼SW¼, and W½SE¼;
Sec. 14, W½E½, and N½NW¼;
Sec. 15, N½NE¼, and E½NE¼NW¼;
Sec. 15, N½NE¼, and E½NE¼NW¼;
T. 19 N., R. 21 E.,
Sec. 10, W½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SW¼SW¼SW¼, and SW¼SW¼SW¼SW¼.
T. 21 N., R. 21 E.,
Sec. 8, SE¼SW¼NE¼, S½SE¼NE¼, and S½;
Sec. 18, lots 1 and 2, S½NE¼NE¼, and SE¼NE¼;
Sec. 20, NE¼NW¼, and SW¼NW¼.
T. 23 N., R. 21 E.,
Sec. 8, SW¼SW¼;
Sec. 17, W½NW¼, and SW¼;
Sec. 18, lot 1, E½E½, NW¼NE¼, and NE¼NW¼;
Sec. 19, lots 3 and 4, E½E½, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 20, W½;
Sec. 29, NW¼.
T. 22 N., R. 22 E.,
Sec. 4, lots 1 to 4, S½N½, and S½.

The areas described aggregate 15,813.12 acres in Washoe County.

In addition, if any of the non-Federal lands in Washoe County within the area described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be included in this application and would be closed to surface entry and mining if acquired during the 2-year segregative period:
T. 21 N., R. 18 E., (on north and east side of U.S. Highway 395).
T. 22 N., R. 18 E.
T. 23 N., R. 18 E., excepting sec. 1–5, inclusive, and the N½N½ of sec. 9–12, inclusive.
T. 20 N., R. 19 E., (on north and east side of U.S. Highway 395).
T. 21 N., R. 19 E.
T. 22 N., R. 19 E.
T. 23 N., R. 19 E., excepting sec. 4.
T. 16 N., R. 20 E.
T. 17 N., R. 20 E., (on east side of U.S. Highway 395).
T. 18 N., R. 20 E., (on east side of U.S. Highway 395).
T. 19 N., R. 20 E., (on east side of U.S. Highway 395).
T. 20 N., R. 20 E.
T. 21 N., R. 20 E.
T. 22 N., R. 20 E.
T. 23 N., R. 20 E., excepting sec. 2, 4 and 12.
T. 17 N., R. 21 E.
T. 19 N., R. 21 E.
T. 20 N., R. 21 E.
T. 21 N., R. 21 E.
T. 22 N., R. 21 E.
T. 23 N., R. 21 E., sec. 18, 19, and 30–32, inclusive.
T. 20 N., R. 22 E.
T. 21 N., R. 22 E.
T. 22 N., R. 22 E.
T. 23 N., R. 22 E., (outside the boundaries of the Pyramid Lake Indian Reservation).
T. 20 N., R. 23 E., sec. 5, 7, 17, 19 and 20.
T. 21 N., R. 23 E., sec. 31.

The purpose of the withdrawal is to protect resource values in the open and mountainous terrain in the southern Washoe County urban, suburban and rural residential area. Washoe County has recently developed an Open Space System that identifies a large acreage of public lands as having open space values. Much of this acreage is identified in BLM's resource management plan for disposal for community expansion. The joint land use plan amendment will address future management of these lands and the need for a protective withdrawal.

The withdrawal application will be processed in accordance with the regulations set forth in 43 CFR Part 2300. Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** 30 days before the scheduled date of the meeting.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to either the State Director or Manager, Carson City Field Office.

For a period of 1 year from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. Rights-of-way, leases, permits and other discretionary temporary land uses will be considered by the authorized officer during this segregative period.

Dated: July 6, 2000.

Margaret L. Jensen,

Deputy State Director, Natural Resources, Lands, and Planning.

[FR Doc. 00–17567 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 103474]

Notice of Proposed Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 14.417 acres of National Forest System land to protect the unique prehistoric, historical, and interpretive integrity of the Tijeras Pueblo and the future investment of the Sandia Ranger District Administrative Site. This notice segregates the land for up to 2 years from location and entry under the United States public land laws, including the mining laws but not the mineral leasing laws.

DATES: Comments should be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE., Suite A, Albuquerque, New Mexico 87113–1001.

SUPPLEMENTARY INFORMATION: On April 5, 2000, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the

United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian, Cibola National Forest

T. 10 N., R. 5 E.,
Sec. 23, SW¼NW¼SW¼,
N½NW¼SW¼SW¼.

The area described contains approximately 14.417 acres in Bernalillo County.

All persons who wish to submit comments, suggestions, or objections about the proposed withdrawal may present their views in writing to the Forest Supervisor of the Cibola National Forest. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: June 30, 2000.

Steven W. Anderson,

Assistant Field Manager, Division of Multi-Resources.

[FR Doc. 00–17390 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

NOTICE: Notice.

SUMMARY: The United States Forest Service proposes to withdraw 14.417 acres of National Forest System land to protect the unique prehistoric, historical and interpretive integrity of the Tijeras Pueblo and future investment of the Sandia Ranger District Administrative Site located on the Cibola National Forest. A notice published in the **Federal Register** on July 11, 2000 segregated the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses that by law may be made of National Forest System land.

DATES: Comments should be received on or before October 21, 2000.

ADDRESSES: Comments should be sent to the Forest Supervisor, Cibola National Forest, 2113 Osuna Road NE, Suite A, Albuquerque, New Mexico 87113–1001.

FOR FURTHER INFORMATION CONTACT: Marian Aragon, Forest Service Southwestern Region, (505) 842–3160.

SUPPLEMENTARY INFORMATION: On April 5, 2000, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian, Cibola National Forest

T. 10 N., R. 5 E.,
Sec. 23, SW¼NW¼SW¼,
N½NW¼SW¼SW¼.

The area described contains approximately 14.417 acres in Bernalillo County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections about the proposed withdrawal may present their views in writing to the Forest Supervisor of the Cibola National Forest.

Dated: June 30, 2000.

Steven W. Anderson,

Assistant Field Manager, Division of Multi-Resources.

[FR Doc. 00–17391 Filed 7–10–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–1661]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service proposes to withdraw approximately 5,922 acres of public lands for 20 years to protect the Browns Park National Wildlife Refuge. This notice closes these lands to operation of the public land laws including location and entry under the mining laws for up to two years. The lands have been and remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before October 10, 2000.

ADDRESSES: Comments should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On June 12, 2000, a petition was approved allowing the Fish and Wildlife Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights, and transfer administrative jurisdiction to the Fish and Wildlife Service:

Sixth Principal Meridian

T. 10 N., R 102 W.,
Sec. 18, lots 7 and 8, E½SW¼, SW¼SE¼, and those portions of lots 6 and 9, SW¼NE¼, SE¼NW¼, NW¼SE¼, and NE¼SE¼ lying south and west of the centerline of County Route 318;
Sec. 19, lots 5, 6, and 12, NW¼NE¼, SW¼NE¼, NE¼NW¼ and those portions of lot 10 and SE½NE¼ lying south and west of the centerline of County Route 318;
Sec. 20, SW¼SW¼ and those portions of the SW¼NW¼, NW¼SW¼, NE¼SW¼, and SE¼SW¼, lying south and west of the centerline of County Route 318;
Sec. 29, SW¼, W½NW¼, SE¼NW¼, and those portions of the SW¼NE¼, NE¼NW¼, NW¼SE¼, SW¼SE¼, and SE¼SE¼ lying south and west of the centerline of County Route 318;
Sec. 32, lot 3, NW¼NE¼ and that portion of lot 1 lying south and west of the centerline of County Route 318.

T. 10 N., R. 103 W.,
Sec. 4, SW¼SW¼, and those portions of the SW¼NW¼, NW¼SW¼, NE¼SW¼, SE¼SW¼, and SW¼SE¼ lying south and west of the centerline of County Route 318;
Sec. 5, lots 7 and 8, S½, S½NW¼, SW¼NE¼, and those portions of lots 5 and 6, and SE¼NE¼, lying south and west of the centerline of County Route 318;
Sec. 6, lots 8, 9, 21,and 22, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 7, N½NE¼;
Sec. 8, N½N½;
Sec. 9, N½NW¼, NW¼NE¼, and that portion of the NE¼NE¼ lying south and west of the centerline of County Route 318;
Sec. 10, SW¼NW¼, SW¼, SW¼SE¼, and those portions of the N½NW¼, SW¼NE¼, NW¼SE¼, SE¼SE¼, and NE¼SW¼ lying south and west of the centerline of County Route 318;
Sec. 11, that portion of the S½S½ lying south and west of the centerline of County Route 318;
Sec. 12, that portion of the SW¼SW¼ lying south and west of the centerline of County Route 318;
Sec. 13, S½, S½NW¼, and that portion of the NW¼NE¼, N½NW¼, and S½NE¼ lying south and west of the centerline of County Route 318;
Sec. 14, N½, SE¼, and N½SW¼;
Sec. 23, NE¼;
Sec. 24, N½.

T. 10 N., R 104 W.,
Sec. 1, lots 9, 10, 11, 14 thru 19 inclusive, E½SW¼.

T. 11 N., R. 103 W.,
Sec 31, S½SE¼ lying south of the centerline of County Highway 318;
Sec 32, S½SW¼ lying south and west of the centerline of County Route 318.

T. 11 N., R. 104 W.,
Sec. 24, lot 4 and SE¼SW¼;
Sec. 25, lots 1 thru 5 inclusive, 7, 12, 22, 24, and 25, and SW¼SW¼;
Sec. 36, lots 1, 2, 8 thru 13 inclusive, and 20 thru 25 inclusive, and NE¼NW¼.

The area described contains approximately 5,922 acres in Moffat County.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action, may present their views in writing to the Colorado State Director. A public meeting will be scheduled and held, the meeting will be conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management, in conjunction with the Fish and Wildlife Service, will continue to manage this land.

Herbert K. Olson,

Acting Realty Officer.

[FR Doc. 00–17479 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–JB–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review (OMB), Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0087).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), we are submitting to OMB for review and approval an information collection request (ICR) titled, Cooperative Agreements. We are also soliciting comments from the public on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Submit written comments on or before August 10, 2000.

ADDRESSES: You may submit written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0087), 725 17th Street, NW, Washington, D.C. 20503. Also, submit copies of your written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Public Comment Procedure

Submit your comments to the offices listed in the **ADDRESSES** section or email your comments to us at *RMP.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ''Attention'' line of your comments; also, include your name and return address. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact David S. Guzy at (303) 231–3432. We will post all comments at *http://www.rmp.mms.gov* for public review.

Paper copies of the comments may be reviewed by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make paper copies of these comments, including names and addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email Dennis.C.Jones@mms.gov. A copy of the ICR is available to you without charge upon request.

SUPPLEMENTARY INFORMATION:

Title: Cooperative Agreements.

OMB Control Number: 1010–0087.

Bureau Form Number: N/A.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. We perform the royalty management functions and assist the Secretary in carrying out DOI's Indian trust responsibility.

States and Tribes wishing to do royalty audits in cooperation with MMS must submit a written request for consideration and application to enter into a cooperative agreement, signed by the governor, Tribal chairman, or other appropriate official. The request must outline the activities to be undertaken and present evidence that the States and Tribes can meet the standards established by the Secretary for the activities to be conducted. After the application is accepted and a cooperative agreement is in effect, the States and Tribes submit an annual work plan and budget, and quarterly reimbursement vouchers.

No proprietary data will be collected; there are no questions of a sensitive nature; and responses to this information collection are voluntary.

Frequency: On occasion, monthly, quarterly, and annually

Estimated Number and Description of Respondents: 10 States and 7 Indian tribes

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 1,224 hours.

Reporting/recordkeeping requirements	Frequency	Number of respondents	Burden hours	Annual burden hours
Annual work plans and budgets, voucher preparation, recordkeeping.	Monthly, Quarterly, Annually	7 Indian Tribes and 10 States.	72	1.224

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: N/A.

Comments: Section 3506(c)(2)(A)of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

We published a **Federal Register** Notice on December 3, 1999 (64 FR 67931), with the required 60-day comment period soliciting public comments on renewing OMB's approval to continue to collect this information. No comments were received. If you now wish to comment on this ICR, please send your comments directly to the offices listed under the **ADDRESSES** section of this Notice. OMB has up to 60 days after reviewing an ICR to approve or disapprove the information collection. However, OMB may act sooner than that once the 30-day public comment period has ended. Therefore, to ensure maximum consideration, you should submit your comments on or before August 10, 2000s.

The PRA provides that an agency shall 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.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744.

Dated: June 29, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–17512 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Ulysses S. Grant National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a general management plan amendment and environmental assessment for Ulysses S. Grant National Historic Site, St. Louis County, Missouri.

SUMMARY: The National Park Service (NPS) will prepare a general management plan amendment and an associated environmental assessment (EA) for Ulysses S. Grant National Historic Site, Missouri, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA).

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EA, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EA. Comments and participation in this scoping process are invited.

ADDRESSES: Written comments and information concerning the scope of the EA and other matters, or requests to be added to the project mailing list should be directed to: Mr. Randy Wester, Site Manager, Ulysses S. Grant National Historic Site, 7400 Grant Road, St. Louis, MO 63123. Telephone: 314–842–1867, extension 23. E-mail: randy__wester@nps.gov.

DATES: Comments regarding the scope of the EA should reach the National Park Service by August 15, 2000.

FOR FURTHER INFORMATION CONTACT: Site Manager, Ulysses S. Grant National Historic Site, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Management of Ulysses S. Grant National Historic Site is guided by a general management plan (GMP) that was approved in 1995. The approved GMP includes direction for development of various visitor facilities. In the past five years it has become apparent that some of the plan's guidance regarding development of visitor facilities is no longer practicable. The GMP Amendment/EA will consider new alternatives for: (1) Relocation of the primary entrance to the site, (2) provision for onsite visitor parking, and (3) relocation of the site's barn to with associated development of administrative offices and an interpretive center. Other provisions of the 1995 GMP will not be considered in this amendment and will continue to be in force.

The environmental review of the GMP Amendment/EA for the historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service anticipates a draft GMP Amendment/EA will be available for public review in October of 2000. A public open house will be scheduled to explain the project and to receive comment after the draft is released for review.

Dated: June 29, 2000.

Alan M. Hutchings,

Acting Regional Director.

[FR Doc. 00–17427 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission.. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Saturday, September 30, 2000 at 9:00 a.m.

Address: Bushkill Visitor Center, U.S. Route 209, Bushkill, PA 18324.

Meeting Date and Time: Saturday, January 13, 2001, at 9:00 a.m.

Snow Date: Saturday, January 20, 2001 at 9:00 a.m.

Address: Walpack Church, Walpack, NJ.

The agenda will include reports from Citizen Advisory Commission committees including: Natural Resources and Recreation, Cultural and Historical Resources, Inter-governmental and Public Affairs, Construction and Capital Project Implementation, Interpretation, and New Jersey Swim Beach Feasibility Study. Superintendent Bill Laitner will give a report on various park issues. The meeting will be open to the public and there will be an opportunity for public comment on these issues.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, DC 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Building, Washington, DC 20510–3802
Honorable Pat Toomey, U.S. House of Representatives, Cannon House Office Bldg., Washington, DC 20515
Honorable Don Sherwood, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 570–588–2418.

William G. Laitner,
Superintendent.
[FR Doc. 00–17430 Filed 7–10–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Of American Samoa Federal Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that a meeting of the National Park of American Samoa Federal Advisory Commission will be held from 10 a.m. to 4 p.m., Monday, July 31, 2000, at the Afono village malae, Afono, American Samoa.

The agenda for the meeting will include:

Welcome and introductions
Review and approval of bylaws
Superintendents report and discussion
National Geographic Article on Park
Discussion of park related tourism
Other Board issues
Public comments

The meeting is open to the public and opportunity will be provided for public comments prior to closing the meeting. The meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after they have been approved by the full Advisory Commission. For copies of the minutes, contact the National Park of American Samoa Superintendent at 011 (684) 633–7082.

Dated: June 25, 2000.

Charles Cranfield,
Superintendent National Park of American Samoa.
[FR Doc. 00–17428 Filed 7–10–00; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 13, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–309–A–B and 731–TA–528 (Review) (Magnesium from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 25, 2000.)
5. Inv. Nos. 731–TA–846, 848, and 849 (Final) (Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe and Tube from the Czech Republic, Mexico, and Romania)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 2, 2000.)
6. Inv. Nos. 701–TA–401 and 731–TA–854 (Final)(Structural Steel Beams from Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 7, 2000.)
7. Outstanding action jackets:

1.) Document No. (E)GC-00-004: Administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 6, 2000.

By order of the Commission.

Donna R. Koehnke,
Secretary.
[FR Doc. 00–17600 Filed 7–7–00; 12:53 pm]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amendment To Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on June 26, 2000, a proposed Amendment No. 1 to the Consent Decree (''Consent Decree Amendment'') in *United States* v. *ASARCO Incorporated,* Civil Action No. C91–5528B was lodged with the United States District Court for the Western District of Washington.

In the original Consent Decree in this action, the United States settled claims against ASARCO Inc. (''Asarco'') under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') for reimbursement of response costs and implementation of remedial actions in connection with the Asraco Tacoma Smelter, an operable unit of the Commencement Bay Nearshore/Tideflats Superfund Site (''CB N/T Site'') in Ruston and Tacoma, Washington. Since entry of the Consent Decree, Asarco has been implementing the remedial action selected by EPA for the Asarco Tacoma Smelter. Amendment No. 1 adds lump sum stipulated penalties to be incurred by Asarco if it fails to meet certain revised deadlines for performing remedial actions at the Asarco Tacoma Smelter and with respect to sediments in Commencement Bay adjacent to the Smelter. The new stipulated penalties relate to revised deadlines by which Asarco must perform certain remedial actions at and near the Asarco Tacoma Smelter that were negotiated by EPA and Asarco and set forth in a Modification Agreement attached to the Consent Decree Amendment as Appendix A. In addition to delaying the schedule for Asarco's implementation of certain response actions at the Smelter, the Modification Agreement also allows for Asarco to reimburse response costs already incurred by EPA but not yet paid in three installments in 2001, 2002, and 2003, with interest accruing on the unpaid balance. the Modification Agreement also modifies requirements under the Consent Decree in *United States* v. *ASARCO Inc.,* Civil Action No. C94–5714 (W.D. Wash.), relating to the remediation of the Ruston/North

Tacoma Study Area by similarly delaying reimbursement of EPA's response costs with respect to that Decree, but requiring that Asarco increase the number of yards in Ruston and North Tacoma that it performs remedial actions on each year. The Modification Agreement also requires Asarco to treat discharges from the Edwards and City stormwater outfalls into Commencement Bay and to dispose of marine sediments dredged from the marina adjacent to the Smelter under the Smelter site-wide cap if EPA selects such dredging and disposal in its Record of Decision for remediation of Asarco off-shore sediments.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *ASARCO Inc.,* D.J. Ref. No. 90–11–2–698A.

The Consent Decree Amendment may be examined at the Office of the United States Attorney, 601 Union Street, Suite 5100, Seattle 98101–3903, and at U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the Consent Decree Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–17396 Filed 7–10–00; 8:45 am]

BILLING CODE 4510–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree; Corrected Notice

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Dyer*, Civil Action No. 00CV11013 (D. Mass.), was lodged with the United States District Court for the District of Massachusetts on May 23, 2000. This notice corrects an inadvertent error in the notice published on June 9, 2000 at 65 FR 36716. That Notice omitted the phrase, ''three thousand dollars ($3,000) at the three year anniversary of the date of entry.'' This proposed Consent Decree concerns a complaint filed by the United States against Bruce S. Dyer and the Holly Farms Nominee Trust, pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from, and impose civil penalties against the Defendants for the discharge of pollutants into the waters of the United States at portions of an approximately 107 acre parcel of land located at 36 Holly Lane in Bridgewater, Massachusetts where a cranberry farm now exists.

The proposed Consent Decree prohibits the discharge of pollutants into waters of the United States without authorization by the United States Department of the Army Corps of Engineers and requires Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities. This proposed Consent Decree further requires Defendants to pay civil penalties to the United States as follows: two thousand dollars ($2,000) within thirty (30) days of the date of entry of this Consent Decree; three thousand dollars ($3,000) at the one year anniversary of the date of entry; three thousand dollars ($3,000) at the two year anniversary of the date of entry; three thousand dollars ($3,000) at the three year anniversary of the date of entry; and four thousand dollars ($4,000) at the four year anniversary of the date of entry.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this corrected notice. Please address comments to Jon M. Lipshultz, Environment and Natural Resources Division, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Dyer,* DJ # 90–5–1–1–05400/1.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Massachusetts, 2300 United States Courthouse, One Courthouse Way, Boston, MA 02210–3002.

Letitia J. Grishaw,

Chief Environmental Defense Section Environment & Natural Resources Division.

[FR Doc. 00–17397 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *H.K. Porter Company, Inc., et al.,* Civil Action No. 96–579 (W.D. Pa.) was lodged on June 26, 2000, with the United States District Court for the Western District of Pennsylvania. The consent decree resolves the claims of the United States against the remaining defendants, Thomas R. Allen, Jr., Morton J. Greene, Anne S. Greene, Carol M. Allen, and Economy Industrial Properties under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), for reimbursement of response costs incurred by the U.S. Environmental Protection Agency (''EPA'') in connection with the Bollinger Superfund Site in Ambridge, Pennsylvania. The consent decree also resolves the claims of the United States for penalties under Section 104(e) of CERCLA, 42 U.S.C. 9604(e), against Thomas R. Allen, Jr. and Morton J. Greene, for their failure to respond adequately to EPA information requests. The consent decree obligates the Settling Defendants to pay a total of $450,000 to settle this action; $400,000 is in reimbursement of EPA's outstanding (unreimbursed) past costs incurred through June 26, 2000 (date of lodging), which total approximately $1.8 million, and $50,000 is in payment of penalties for Thomas R. Allen's and Morton J. Greene's failure to respond to EPA's Section 104(e) information requests. The settlement amount is based on Settling Defendants' limited financial resources and ability to pay. The Settling Defendants remain potentially liable for any response costs that may be incurred after the date of lodging.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *H.K. Porter Company, Inc., et al.,* DOJ Ref. #90–11–2–738C.

The proposed consent decree may be examined at the offices of the United States Attorney, Gulf Tower, 7th

Avenue & Grant Street, Pittsburgh, Pennsylvania 15219, and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA. A copy of the consent decree may also be obtained by mail from the U.S. Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 00–17395 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on April 7, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TRW Space and Electronics Group, Redondo Beach, CA; Astrolink, Bethesda, CA; Avail Networks, Inc., Ann Arbor, MI; Basis Communications Corporation, Fremont, CA; Bay Microsystems, Inc., Santa Clara, CA; Catamaran Communications, Miliptas, CA; CyberPath Inc., Piscataway, NJ; General Bandwidth, Austin, TX; Ishoni Networks, Santa Clara, CA; Optical Solutions, Plymouth, MN; Tachion Networks, Eatontown, NJ; TeraGlobal Communications Corp., San Diego, CA; TERAYON Communication Systems, Tel-Aviv, *Israel*; and Trendium Inc., Ft. Lauderdale, FL have been added as parties to this venture. The following members have changed their names: Future Software Private Ltd. to Future Communications Software, San Jose, CA; and RADWIZ Ltd. to TERAYON Communication Systems, Tel-Aviv, *Israel*.

The following principal members have downgraded to auditing members: KDD, Tokyo, *Japan*; Panduit Corporation, Tinley Park, IL; Philips Research Labs, Aachen, *Germany*; Scientific Research Corp., Atlanta, GA; and Sumitomo Electric USA, Inc., Santa Clara, CA. The following auditing members have upgraded to principal members: GlobeSpan, Woodbridge, NJ; GTE Laboratories, Inc., Waltham, MA; Premisys Communications, Fremont, CA; and Zhone Technologies, Inc., Fremont, CA. Also, Adaptive Broadband Corporation, Sunnyvale, CA; AMCC, San Diego, CA; Ascom, Bern, *Switzerland*; Boeing Company, Seattle, WA; Booz Allen & Hamilton, McLean, VA; Cerent Corporation, Petaluma, CA; CYLINK Corp., Sunnyvale, CA; ETRI, Taejeon, *South Korea*; Hewlett-Packard, Sunnyvale, CA; IBM, Research Triangle Park, NC; Inrange Technologies Corporation, Mount Laurel, NJ; INTRACOM S.A., Peania, *Greece*; Italtel, Settimo Milanese, *Italy*; Korea Telecom, Seoul, *South Korea*; Litton Network Access Systems, Roanoke, VA; Madge Networks Inc., Wexham, *United Kingdom*; Maker Communication, Inc., Westborough, MA; Matra Marconi Space, Toulouse, *France*; Microsoft Corporation, Redmond, WA; Mitsubishi Rayon Co. Ltd., Tayohash Aichi, *Japan*; National Communications System, Arlington, VA; Nokia Corp., Helsinki, *Finland*; Novanet Semiconductor, Raanana, *Israel*; Olicom A/S, Lyngby, *Denmark*; Pulse Communications, Inc., Herndon, VA; Qwest Communications, Arlington, VA; SALIX Technologies, Inc., Rockville, MD; SITA, Valbonne, *France*; StorageTek, Brooklyn Park, MN; StratumOne, Santa Clara, CA; Tekelec, Inc., Calabasas, CA; Telecom Italia, Rome, *Italy*; Williams Communications, Tulsa, OK; 2Wire, Inc., Milpitas, CA; and Sonoma Systems, Marina Del Rey, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on January 10, 2000. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17399 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on January 6, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Enterprise Computer Telephony Forum (''ECTF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, StarBridge Technologies, Inc., Marlborough, MA, has been added as a Principal Member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, the ECTF intends to file additional written notifications disclosing all changes in membership.

On February 20, 1996, ECTF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on October 21, 1999. A notice for this filing has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17405 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hart Communication Foundation (''HCF'')

Notice is hereby given that, on November 3, 1998, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Hart Communication Foundation (''HCF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Action Instruments, Inc., San Diego, CA; Amdell Ltd., Thebarton, *Australia*; Burkert Gmbh & Company KG, Ingelfingen, *Germany*; Camille Bauer AG, Wohlen, *Switzerland*; CEGELEC–BPT, Camart, Cedex, *France*; DANFOSS A/S, Nordborg, *Denmark*; Direct Measurement Corp., Longmont, CO; Druck Ltd., Groby, Leicester, *United Kingdom*; Dynisco Instruments, Sharon, MA; Elcon Instruments, Norcross, GA; EMCO Flowmeters, Longmont, CO; Fluke Electronics Corporation, Everett, WA; GLI International Inc., Milwaukee, WI; Huakong Technology Co.; Ltd., Beijing, *China*; Jordan Controls, Inc., Milwaukee, WI; Klay Instruments B. V., Dwingeloo, *The Netherlands*; LABOM Mess-und Regeltechnick GmbH, Hude, *Germany*; M-System Co., Ltd., Yokohama, *Japan*; Paper Machine Components, Inc. (PMC), Danbury, CT; Rochester Instrument Systems, Inc., Rochester, NY; Sparling Instruments, Inc., El Monte, CA; Spriano S.p.A., Vimodrone, *Italy*; Tokyo Keiso Company, Ltd., Tokyo, *Japan*; TROLEX Limited, Stockport, Cheshire, *United Kingdom*; TURBO-Werk Messtechnik GmbH, Koln, *Germany*; U.S. Electrical Motors, St. Louis, MO; Val Controls A/S, Esbjerg, *Denmark*; VALCOM S.r.l., Milan, *Italy*; VorTek Instruments, LLC, Longmont, CO; W. Borst, Fachingen, *Germany*; WIKA Alexander Wiegand GmbH, Klingenberg, *Germany*; Worcester Controls Corporation, Marlboro, MA; Yokogawa Europe B.V., Amersfoort, *The Netherlands*; and Zaklady Automatyki Przemyslowej S.A., Ostrow Wielkopolski, *Poland* have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Hart Communication Foundation (''HCF'') intends to file additional written notification disclosing all changes in membership.

On March 17, 1994, Hart Communication Foundation (''HCF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23234).

The last notification was filed with the Department on December 8, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15939).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17400 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association (''PCA'')

Notice is hereby given that, on February 14, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Florida Rock Industries, Inc., Jacksonville, FL; Continental Florida Materials, Inc., Fort Lauderdale, FL; Norval, Inc., Brooklyn, NY; and River Consulting, Inc., Columbus, OH have been added as parties to this venture. Also, Lone Star Northwest, Seattle, WA has changed its name to Glacier Northwest, Inc., Seattle, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association (''PCA'') intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association (''PCA'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 67591).

The last notification was filed with the Department on October 25, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17406 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rotorcraft Technology Association, Inc. (''RITA'')

Notice is hereby given that, on November 24, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Rotorcraft Technology Association, Inc. (''RITA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arizona State University, Tempe, AZ; Ohio Aerospace Institute, Cleveland, OH; University of California, Los Angeles, CA; University of Texas at Arlington, Arlington, TX; and West Virginia University, Morgantown, WV have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rotorcraft Technology Association, Inc. (''RITA'') intends to file additional written notification disclosing all changes in membership.

On September 28, 1995, Rotorcraft Technology Association, Inc. (''RITA'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of April 3, 1996 (61 FR 14817).

The last notification was filed with the Department on January 7, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 19, 1999 (64 FR 13605).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17398 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Secure Digital Music Initiative

Notice is hereby given that, on December 29, 1 999, pursuant to Section (6a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Secure Digital Music Initiative has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ZipLabs Pte Ltd, Singapore Science Park II, *Singapore*; Rowe International, Grand Rapids, MI; Oak Technology, Inc., Sunnyvale, CA; Guillemot Corp., SA, Carentoir, *France*; Media Tag Limited, Hayes, Middlesex, *United Kingdom*; MHS SA, Nantes, Cedex 3, *France*; Mitsubishi Electric Corporation, Hyogo, *Japan*; Be, Incorporated, Menlo Park, CA; Portland Software, Inc., Portland, OR; Music.co.jp, Inc., Tokyo, *Japan*; EMDES Systems Company Limited, Tokyo, *Japan*; Ericsson Mobile Communications, Stockholm, *Sweden*; Qpass, Seattle, WA; Funai Corporation, Teterboro, NJ; and ARM Limited, Cambridge, *United Kingdom* have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Secure Digital Music Initiative intends to file additional written notification disclosing all changes in membership.

On June 28, 1999, Secure Digital Music Initiative filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 1999 (64 FR 67591).

The last notification was filed with the Department on October 4, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17402 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute Fuel Filtration Cooperative R&D Program—Phase III

In Notice document 99–13296 appearing on page 28521 in the issue of Wednesday, May 26, 1999, in the third column, after the thirtieth line of the first paragraph, the following paragraph should be added: ''Membership in the program remains open, and SwRI intends to file additional written notifications disclosing all changes in the membership or planned activities.''

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17401 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI''): Advanced Reciprocating Engine Systems (''ARES'')

In Notice document 00–3961 appearing on page 8445 in the issue of Friday, February 18, 2000, make the following corrections:

In the second column, heading of Notice, fifth line, ''Reciprocal'' should read ''Reciprocating''; in the third column, first paragraph, second line, ''Reciprocal'' should read ''Reciprocating''; in the third column, second paragraph, seventh line, ''Reciprocal'' should read ''Reciprocating''; in the third column, third paragraph, third line, ''Reciprocal'' should read ''Reciprocating''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17403 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI''): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor

In Notice document 99–21560 appearing on page 45279 in the **Federal Register** issue of Thursday, August 19, 1999, make the following correction:

In the second column, heading of Notice, third line, ''Southwest Research Institute (''SwRI''):'' should be added before ''Joint Industry Program''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17404 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on October 8, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, O-In Design Automation, Inc., San Jose, CA; Arasan Chip Systems, San Jose, CA; Axys Design Automation, Inc., Irvine, CA; Guy Bois, Montreal, Quebec, Canada; Communications Enabling Technologies, Irvine, CA; Desideratum Company, Moscow, Russia; Enabling Technology, Inc., Sunnyvale, CA; David Greenstein, Cupertino, CA; In-Chip Systems, Inc., Sunnyvale, CA; Industrial Technology Research Institute, Taiwan; Institute of System Level Integration, Livingston, United Kingdom; LEDA Systems, Inc., Plano, TX; Minoru Hasegawa, Tokyo, Japan; Mixel, Inc., San Jose, CA; PIXIM, Mountain View, CA; Q Systems, Inc., Feasterville, PA; RealChip, Sunnyvale, CA; Synplicity, Inc., Sunnyvale, CA; Teradyne, Inc.,

Agoura Hills, CA; and X–VEIN, Inc., Tokyo, Japan have been added as parties to this venture. Also, AMS Group International, Unterpremstatten, Austria; Chronology Corp., Redmond, WA; DSP Group, Herzlia, Israel; Henry Davis Consulting, Inc., Soquel, CA; IDEC–IC Design Education Center, Taejon, South Korea; Integrated Intellectual Property, Inc., Santa Clara, CA; LightSpeed Semiconductor Corp., Sunnyvale, CA; Packet Engines, Inc., Spokane, WA; Richard Watts Associated, Ltd., Bedfordshire, United Kingdom; Scientific & Engineering Software, Inc., Austin, TX; Technical Data Freeway, Inc., Concord, MA; Trimble Navigation Limited, Sunnyvale, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 14, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 2, 1999 (64 FR 67592).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–17407 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1287]

Program Announcements for OJJDP's Fiscal Year 2000 Gang-Free Schools and Communities Initiative

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of solicitations.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for two new programs to address the youth gang problem and one new evaluation program under its Fiscal Year 2000 Gang-Free Schools and Communities Initiative. This initiative represents a collaboration between the U.S. Department of Justice and the U.S. Departments of Education, Health and Human Services, Labor, and Treasury. The two new programs are the Gang-Free Communities Program and the Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime Program. An evaluation of the second program, An Enhanced School/Community Approach, will also be competitively awarded.

DATES: Applications for two of the three programs (the Gang-Free Communities Program and the National Evaluation of the Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime) are due by 5 p.m. ET on Friday, September 1, 2000. The due date for applications for the Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime is 5 p.m. ET on Friday, September 15, 2000.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. Interested applicants can obtain the three program announcements (which are contained in one document) and the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse at 800–638–8736. The program announcements are also available on OJJDP's Web site at www.ojjdp.ncjrs.ogr (click on ''Grants & Funding'' for the program announcements). The *Application Kit* is available online at www.ojjdp.ncjrs.org/grants/about.html#kit. (See the ''Format'' section in each program announcement for instructions on application standards.)

FOR FURTHER INFORMATION CONTACT: Jim Burch, Gang Programs Coordinator, Office of Juvenile Justice and Delinquency Prevention, 202–307–5914, or (for the National Evaluation of OJJDP's Comprehensive Gang Model: An Enhanced School/Community Approach to Reducing Youth Gang Crime) Phelan Wyrick, Program Manager, Research and Policy Development Division, Office of Juvenile Justice and Delinquency Prevention, at 202–353–9254. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

Authority This action is authorized under Title II, Part D, of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601 *et seq.*).

Background

In 1998, more than 4,000 urban, suburban, and rural communities in the United States were experiencing youth gang problems. More than 30,000 youth gangs and 800,000 youth gang members were reported in the most recent systematic, annual nationwide survey of law enforcement agencies conducted by OJJDP's National Youth Gang Center.

Research findings from OJJDP and the National Institute of Justice (NIJ) suggest that youth gangs continue to present a serious threat to public safety, despite the recent downturn in juvenile crime. OJJDP's Program of Research on the Causes and Correlates of Delinquency found that youth who are involved in youth gangs commit three to seven times as many delinquent and criminal offenses as youth who are not gang involved. The studies found this trend holds true even when comparing gang youth to nongang youth who were delinquents. Involvement with the juvenile and criminal justice systems is usually not a new experience for youth who join gangs. Many of these youth not only have come into previous contact with the justice system, but in many cases have also been involved in or in need of child protective, mental health, and other services. These youth are known to experience significant risk factors in numerous domains and pose a threat not only to their own safety, but to the safety of their families and their communities as well.

The threat of gang crime and violence is not limited to the streets. According to the 1998 National Youth Gang Survey, 40 percent of youth gang members in the United States are estimated to be under age 17. Presumably, most of these youth are still in school. The percentage of public school students who reported that gangs were present in their schools nearly doubled from 17 percent in 1989 to 31 percent in 1995, according to the U.S. Departments of Education and Justice. Thus, youth gang activity is also a threat to the very place sometimes assumed to be free from safety threats: the classrooms. These issues present a continuing need for communities to seek progressive and promising approaches to address the problem.

The purpose of the Gang-Free Communities Program is to provide up to 12 communities an opportunity to implement the OJJDP Comprehensive Gang Model as a way of addressing its local youth gang problem. The purpose

of the second program, which is jointly sponsored by the U.S. Department of Education's Office of Safe and Drug Free Schools, and the U.S. Department of Health and Human Services' Center for Mental Health Services, is to provide up to four communities an opportunity to assist in developing and implementing the OJJDP Comprehensive Gang Model and enhancing the Model's school component. The evaluation effort will focus on the latter program in order to measure its success. Under each program, the initial funding year will consist of a planning and assessment process to better identify the youth gang problem locally and to better develop a plan for addressing the problem(s) using the OJJDP Model.

Dated: June 27, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–16712 Filed 7–10–00; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before August 25, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records,

agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Labor, Employment Standards Administration (N9–448–00–1, 6 items, 6 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the Office of the Assistant Secretary for Employment Standards. Included are electronic copies associated with such records as correspondence files, files on committees and meetings, speeches, and documents relating to congressional hearings. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job N1–448–90–1.

2. Department of Labor, Employment Standards Administration (N9–448–00–2, 36 items, 36 temporary items. Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Management, Administration and Planning. Included are electronic copies associated with such records as records disposition files, agency forms, training plans, research materials, GAO reports, inventories of automated systems equipment, employee grievance case files, issue papers, management improvement studies, information releases, long range strategy papers, analyses of legislation, and briefing books. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–448–76–1, NC1–448–77–1, NC1–448–82–1, N1–448–92–1, N1–448–97–1, and N1–448–98–1.

3. Department of Labor, Employment Standards Administration (N9–448–00–3, 31 items, 31 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Federal Contract Compliance Programs. Included are electronic copies associated with such records as public comments on proposed policies, directives, speeches, records management files, forms, affirmative action plans, training files, quarterly and annual reports, quality control audits, legal opinions, Freedom of Information Act and Privacy Act requests, and publications. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–174–76, N1–448–90–2, and N1–448–93–1.

4. Department of Labor, Employment Standards Administration (N9–155–00–1, 33 items, 33 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Wage and Hour Division. Included are electronic copies associated with such records as contracts, subject files, reports and studies, child labor files, safety and health files, legal opinions, investigative files, committee files, and prevailing wage determinations. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NN–164–171, NN–168–43, NC–155–75–1, NC–155–75–2, NC1–155–84–1, N1–155–90–1, and N1–155–96–1.

5. Department of Labor, Employment Standards Administration (N9–271–00–1, 60 items, 60 temporary items).

Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Workers' Compensation Programs. Included are electronic copies associated with such records as directives, subject files, publications, compensation case files, financial files, training files, and reports on caseload. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs N1–271–80–1, N1–271–92–1, and N1–271–95–1.

6. Department of Labor, Employment Standards Administration (N9–317–00–4, 14 items, 14 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Office of Labor-Management Standards. Included are electronic copies associated with such records as correspondence concerning reports on labor organizations, criminal and civil investigative case files, claims files, contract files, program policy documents, and files concerning legal and legislative matters. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Jobs NC1–317–84–1, N1–317–94–1, and N1–317–95–1.

Dated: June 29, 2000.

Geraldine Phillips,

Acting Assistant Archivist for Record Services, Washington, DC.

[FR Doc. 00–17470 Filed 7–10–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Conference Call

AGENCY: National Council on Disability (NCD).

SUMMARY: This notice sets forth the schedule of the forthcoming meeting/ conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal Advisory Committee Act (P.L. 92–463).

International Watch: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the

values and goals of the Americans with Disabilities Act.

DATES: August 15, 2000, 12:00 p.m. EDT.

For International Watch Information, Contact: Kathleen A. Blank, Attorney/Program Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), kblank@ncd.gov (e-mail).

Agency Mission: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

Open Meeting/Conference Call: This advisory committee meeting/conference call of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on July 6, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–17500 Filed 7–10–00; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, July 13, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Request from Two (2) Federal Credit Unions to Convert to Community Charters.

2. Missouri Member Business Loan Rule.

3. Final Rule: Amendment to Section 701.21(c) (7) (ii) (C), NCUA's Rules and Regulations, Interest Rate Ceiling.

4. Final Rule: Amendments to Part 7802, NCUA's Rules and Regulations, Prompt Corrective Action—Risk-Based Net Worth Requirement.

5. NCUA Mid-Session Operating Budget.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 13, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Two (2) Administrative Actions under Section 206 for the Federal Credit Union Act. Closed pursuant to exemptions (6), (7), (8), (9) (A) (ii), (9) (B), and (10).

2. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).

3. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–17599 Filed 7–7–7; 12:53 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Multidisciplinary section (Creativity category)—August 7–9, 2000, Room 716. A portion of this meeting, from 1:30 p.m. to 3:00 p.m. on August 9th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on August 7th and 8th, and from 9 a.m. to 1:30 p.m. and 3 p.m. to 4:30 p.m. on August 9th, will be closed.

Presenting section (Creativity and Organizational Capacity categories)—August 15–16, 2000, Room 716. A portion of this meeting, from 10:15 a.m. to 12 p.m. on August 16th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on August 15th and from 9 a.m. to 10:15 a.m. and 12 p.m. to 1 p.m. on August 16th, will be closed.

Multidiciplinary section (Organizational Capacity category)—August 17, 2000, in Room 716. A portion of this meeting, from 4:30 p.m. to 5:30 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 4:30 p.m. and from 5:30 p.m. to 6:30 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 2000, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines and Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 29, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 00–17110 Filed 7–10–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: July 25, 2000, 8:00 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard J. Fragaszy, Program Director, Geomechanics and Geotechnical Systems, Division of Civil and Mechanical Systems, Room 545, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 MBSCON Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17434 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Elementary, Secondary and Informal Education (#59)

Date and Time: Sunday, July 30, 2000, 5 p.m. to 9 p.m.; and Monday, July 31, 2000 through Wednesday, August 2, 2000; 8 a.m. to 5 p.m.

Place: Capitol Hilton Hotel, 16th and K Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Anna Suarez, Program Director, Presidential Awardees, Education and Human Resources, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1613.

Purpose of Meeting: To select the Presidential Awardees for 2000.

Agenda: To review and select applicants for the Presidential Awards for Excellence in Mathematics and Science Teaching.

Reason for Closing: The applicants being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17435 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date/Time: July 20–21, 2000; 8:00AM–5:30PM.

Place: Room 1020, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Marvin Goldberg, Program Director for Elementary Particle Physics, Division of Physics, 4201 Wilson Blvd., Room 1015, Arlington, VA 22230. Telephone: (703) 306–1894.

Purpose of Meeting: To provide advice on major project costs of proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the evaluation process for funding.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: This notice was late due to scheduling and travel arrangements for panel members.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17433 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130); Committee of Visitors.

Date/Time: July 25–26, 2000, 8:00 A.M. to 5:30 P.M.; and July 27, 2000 1:00 P.M.–5:00 P.M.

Place: NSF, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

Type of Meeting: Part-Open.

Contact Person: Altie Metcalf, Budget and Planning Officer, Room 755, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1030.

Purpose of Meeting: To carry out Committee of Visitors review, including program evaluation and GPRA assessments.

Agenda: Closed: July 25, 2000, 1:00–5:30; and July 26, 2000, 8:30–10:00. To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years.

Open: July 25, 2000, 8:00–12:00; July 26, 2000, 10:15–5:30; and July 27, 2000 1:00–5:00. To assess results of NSF program investments. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the COV will be reviewing proposals that will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17432 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (61).

Date/Time: August 14, 16, 17, 21, 23, 24, 28–31 2000; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Joseph Hennessey, Acting Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 305–1395 x 5283.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 5, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–17436 Filed 7–10–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8767]

Finding of No Significant Impact Related to Amendment of Materials License No. SUC–1380, U.S. Department of the Army, Lake City Army Ammunition Plant, Independence, MO

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Materials License No. SUC–1380, held by the U.S. Department of the Army (Army or the licensee), to authorize remediation of radioactive contamination in both the 600-yard bullet catcher and the southeast wing of Building 3A areas of its Lake City Army Ammunition Plant (LCAAP) located in Independence, Missouri.

Summary of Environmental Assessment

Background

The Army is the holder of Materials License No. SUC–1380 (hereafter, license) which the NRC originally issued on June 6, 1980, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR). This license, among other things, authorizes the Army to possess depleted uranium (DU) and DU-contaminated waste incident to decommissioning of facilities at LCAAP.

During the 1960s and 1970s, the Army produced and tested DU XM–101 spotter rounds at LCAAP. Part of the production of the XM–101 spotter rounds took place in the southeast wing of Building 3A. By 1968, the program was terminated and approximately 44,000 XM–101 spotter rounds were left on site. In 1971, because the rounds were fused, the licensee decided that a safe method for demilitarizing the remaining rounds was to fire the rounds into a sand-filled catch box. The actual catch box used for this demilitarization operation was the ''600-yard bullet catcher.'' The catch box was filled with sand as an impact material. During this demilitarization operation, the impact material in the catch box was periodically replaced with fresh impact material. The used impact material (*i.e.,* DU-contaminated sand) was removed from the catch box and placed in an area of the site known as ''Area 10.'' The Army, by letter dated May 1, 1998, submitted revision 5.1 of its plan to remediate Area 10. The NRC authorized remediation of Area 10, in accordance with that plan, on August 25, 1998 (License Amendment No. 32). The LCAAP site includes two production buildings that were used to produce the DU-spotter rounds. The production buildings, 3A and 12A, were remediated in April 1987. However, during an inspection in 1995, the staff identified several locations in the southeast wing of Building 3A, on the floor and walls, with fixed or removable activity in excess of unrestricted use criteria.

The licensee, by letter dated August 12, 1998, and supplemented by letters dated March 9, June 28, December 21, 1999, and June 20, 2000, submitted its current plans for the remediation of DU and DU-contaminated material from both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A. The Army plans to have its contractor, Allied Technology Group, Inc. (ATG), remediate these areas under the provisions of the Army's license.

Proposed Action

The licensee proposes to remediate both the 600-yard bullet catcher area and the southeast wing of Building 3A. The licensee, by letter dated August 12, 1998, and supplemented by letters dated March 9, June 28, December 21, 1999, and June 20, 2000, submitted its current plans for the remediation of DU and DU-contaminated material from both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A. The DU-contaminated material to be removed from the 600-yard bullet catcher area will most likely also contain some lead. The licensee will perform the remediation by surveying, excavating, packaging, and transporting, by a combination of truck and rail, DU and DU-contaminated material from the LCAAP to a licensed low-level radioactive waste disposal facility for disposal.

The Need for Proposed Action

The proposed action is necessary to allow the licensee to gather and remove DU and DU-contaminated material from both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A. This action will facilitate remediation of both radiologically contaminated areas sufficiently to meet NRC's unrestricted-use release criteria, and is one of the actions necessary for removal of the LCAAP from the Army's Materials License SUC–1380.

Alternative to Proposed Action

An alternative to the proposed action is a no-action alternative. The no-action alternative would mean that both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A would not be remediated at this time. This conflicts with NRC's requirements in § 40.42 of timely remediation at sites that have ceased operations. Although that while there is no immediate threat to the public health and safety from this site, as long as the licensee maintains appropriate controls over the radioactive material, not undertaking remediation at this time, does not resolve the regulatory and potential long-term health and safety problems involved in storing this waste. No action now would delay remediation of these areas until some time in the future, when costs could be much higher than they are today. It is even possible that no disposal option will be available in the future if current low-level radioactive waste disposal facilities are closed and no new ones are opened. Therefore, the no-action alternative is not acceptable.

Environmental Impacts of Proposed Action

Radiological impacts on members of the public may result from inhalation and ingestion of releases of radioactivity in air and water during the remediation operations and direct exposure to radiation from material at the site during remediation operations and transport for disposal. Decommissioning workers may receive dose by ingestion, inhalation, and direct exposure during the remediation activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered. NRC staff found that the radiological

consequences of remediating both the LCAAP 600-yard bullet catcher area and the southeast wing of Building 3A were insignificant for both members of the public and radiation workers. The radiological consequences were well within the regulatory limits, as specified in 10 CFR part 20.

The licensee has estimated the amount of radioactive contaminated waste/mixed waste to be shipped to a facility approved by the NRC to receive and dispose of this waste to be approximately 1,133 m^3 (40,000 ft^3). The staff has determined that any facility approved by the NRC to receive and dispose of this low-level radioactive/mixed waste would be regulated either under state or Federal rules for land disposal of radioactive/mixed waste. This will provide for long-term institutional control and minimize the potential for human intrusion and other environmental impacts. Therefore, NRC staff determined that disposing of the LCAAP low-level radioactive/mixed waste at such a facility will not cause any significant impacts on the human environment.

Nonradiological impacts evaluated were associated with demography and socioeconomic, air quality, land and water use, transportation, threatened or endangered species, and historical or archeological sites. NRC staff found that the nonradiological consequences either were insignificant or would have no impacts on the human environment.

Conclusions

Based on NRC staff's evaluation of the licensee's LCAAP 600-yard bullet catcher and the southeast wing of Building 3A areas remediation plan, NRC staff has determined that the proposed plan complies with NRC's public and occupational dose and effluent limits, and that authorizing the proposed activities by license amendment would not be a major Federal action significantly affecting the quality of the human environment. NRC staff concludes that a finding of no significant impact (FONSI) is justified and appropriate, and that an environmental impact statement (EIS) is not required. An Opportunity for a Hearing was offered. [1]

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared this environmental assessment (EA) related to the issuance of a license amendment to Materials License SUC–1380 authorizing remediation of both the 600-yard bullet catcher and the southeast wing of Building 3A areas of the LCAAP. On the basis of this EA, NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment and does not warrant the preparation of an EIS. Accordingly, it has been determined that a FONSI is appropriate.

FOR FURTHER INFORMATION CONTACT: For further details with respect to this action, the EA and other documents related to this proposed action are available for public inspection and copying at the NRC's Website, *http://www.nrc.gov* (the electronic reading room).

Dated at Rockville, Maryland, this 5th day of July 2000.

For the U.S. Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17467 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

[1] 64 FR 31020 (June 9, 1999).

NUCLEAR REGULATORY COMMISSION

Staff Responses to Frequently Asked Questions Concerning Decommissioning of Nuclear Power Plants, Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of NUREG–1628, ''Staff Responses to Frequently Asked Questions Concerning Decommissioning Of Nuclear Power Plants,'' a final report dated June 2000.

ADDRESSES: A single copy of NUREG–1628 is available free upon written request to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by faxing a request to 301–415–2289, or by e-mail to *DISTRIBUTION@nrc.gov.* Multiple copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328; *www.access.gpo.gov/su—docs;* 202–512–1800 or The National Technical Information Service, Springfield, Virginia 22161–0002; *www.ntis.gov;* 1–800–553–6847 or, locally, 703–605–6000.

A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. You may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic Reading Room at *www.nrc.gov/NRC/ADAMS/index.html.*

This publication is also posted at NRC's Web site address *http://www.nrc.gov/NRC/NUREGS/SR1628/index.html*

FOR FURTHER INFORMATION CONTACT: John L. Minns, Division of Licensing Project Management, Washington, DC 20555–0001 (telephone 301–415–3166).

SUPPLEMENTARY INFORMATION: This report, through a question-and-answer format, provides NRC staff responses to frequently asked questions on the decommissioning of commercial power reactors. The document was prepared in response to the increase in the number of power reactors in the decommissioning process and significant changes in the regulations since 1996. The staff realized that there was a general lack of public understanding of the decommissioning process and the risks associated with decommissioning. The document was developed to assist the public in understanding the decommissioning process for commercial nuclear power plants. A draft of this report was issued for comment in April 1998. The June 2000 Final Report incorporates the comments received on the draft and updates responses to questions with current information. The staff also included additional questions and answers from the public meeting transcripts and written correspondence to members of the public. The report contains a definition of decommissioning and a discussion of decommissioning alternatives. It also provides a focus on decommissioning experiences in the United States and how the NRC regulates the decommissioning process. Questions on spent fuel, low-level waste, and transportation related to decommissioning are answered. Questions on socioeconomics, partial site releases, independent spent fuel storage installation (ISFSI), license termination, the ultimate disposition of the facility, fiances for completing decommissioning, and hazards associated with decommissioning are also addressed. This document also provides responses to questions related to public involvement in decommissioning as well as providing the public with sources for obtaining additional information on decommissioning.

Dated at Rockville, Maryland, this 5th day of July 2000.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–17465 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Standard Review Plan for the Review of the Department of Energy Plans for Achieving Regulatory Compliance at Sites With Contaminated Ground Water Under Title I of the Uranium Mill Tailings Radiation Control Act; Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability and Request for Comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of, and requesting comments on, NUREG–1724, ''Standard Review Plan for the Review of DOE Plans for Achieving Regulatory Compliance at Sites with Contaminated Ground Water under Title I of the Uranium Mill Tailings Radiation Control Act.''

The U.S. Department of Energy (DOE) is conducting ground-water corrective actions under the Uranium Mill Tailings Remedial Action Groundwater Project. This Standard Review Plan will provide guidance to NRC staff performing safety and environmental reviews of ground-water quality compliance activities conducted by the DOE under Title I of the Uranium Mill Tailings Radiation Control Act.

The purpose of this Standard Review Plan is to ensure the quality and uniformity of NRC staff reviews of site-specific documents describing DOE plans for achieving regulatory compliance at sites with contaminated groundwater. The standard review plan is written to cover a variety of site conditions and plans. Each section provides a description of the areas of review, review procedures, acceptance criteria, and an evaluation of findings.

DATES: The comment period ends October 10, 2000. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays.

Persons who are considering submitting public comments may request a free single copy of draft NUREG–1724 by writing to the U.S. Nuclear Regulatory Commission, ATTN: William Ford, Mail Stop T7J8, Washington, DC 20555–0001. Alternatively, requests may be submitted through the Internet by addressing electronic mail to *whf@nrc.gov.* A copy of draft NUREG–1724 is also available for inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

The NRC requests comments on this licensing guidance NUREG. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION, CONTACT: Mr. William Ford, T–7–J8, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6630; electronic mail address: *whf@nrc.gov.*

Electronic Address

NUREG–1724 is available electronically by visiting the NRC's Home Page at *http://www.nrc.gov/NRC/NUREGS/indexnum.html* or *http://www.nrc.gov/NRC/wwwforms.html.*

Dated at Rockville, Maryland this 28th day of June, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–17466 Filed 7–10–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection; Request for Public Comments

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on renewal and changes to two information collection requests from two types of entities: (1) reports from auditors to auditees concerning audit results, audit findings, and questioned costs, and (2) reports from auditees to the Federal Government providing information about the auditees, the awards they administer, and the audit results. These collection efforts are required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 *et seq.*) and OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

Included as part of this information collection is the Data Collection Form (SF–SAC). The changes being proposed are to modify the data elements collected on the SF–SAC. The current SF–SAC will be used for audit periods ending on or before December 31, 2000. A revised SF–SAC will be used for audit periods ending on or after January 1, 2001.

DATES: Submit comments on or before September 11, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be mailed to Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, NW, Room 6025, Washington, DC 20503. Electronic mail (E-mail) comments may be submitted to: tramsey@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 as well as the name and phone number of a contact person.

COMMENTS: All responses will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The Information Collection Form can be obtained by contacting the Office of Federal Financial Management as indicated above or by download from the OMB Grants Management home page on the Internet at http://www.whitehouse.gov/OMB/grants/.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0057.

Title: Data Collection Form.

Form No: SF–SAC.

Type of Review: Revision of a currently approved collection.

Respondents: States, local governments, and non-profit organizations (Non-Federal entities).

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 59 hours for each of 400 large respondents and 17 hours for each of 59,600 small respondents for estimated annual burden hours of 1,036,800.

Estimated Number of Responses per Respondent: 1.

Frequency of Response: Annually.

Needs and Uses: Reports from auditors to auditees and reports from auditees to the Federal government are used by non-Federal entities, pass-through entities, and Federal agencies to ensure that Federal awards are expended in accordance with applicable laws and regulations. The Federal Audit Clearinghouse (FAC) (maintained by the U.S. Bureau of the Census) uses the information on the SF–SAC to ensure proper distribution of audit reports to Federal agencies and identify non-Federal entities who have not filed the required reports. The FAC also uses the information on the SF–FAC to create a government-wide database which contains information on audit results. This database is publicly accessible on the Internet at http://harvester.census.gov/sac/. It is used by Federal agencies, pass-through entities, non-Federal entities, auditors, the General Accounting Office, OMB, and the general public for management and information about Federal awards and the results of audits. Comments are invited on: (a) Whether the proposed information collection 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 estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–17516 Filed 7–10–00; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

The Presidential Advisory Committee on Expanding Training Opportunities

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

Time and Date: 9:00 a.m., Tuesday, August 1, 2000.

Place: White House Conference Center, Truman Room, 725 Jackson Place, Washington, DC. The Truman Room is on the 3rd floor.

Status: This meeting will be open to the public. Seating is limited and will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM through the information shown below to obtain appropriate accommodations. Any member of the public wishing further information about the meeting or wishing to submit oral or written comments should contact the Designated Federal Official through the information shown below. Requests for oral comments must be in writing and received no later than 5:00 p.m. Eastern Daylight Savings Time on Tuesday, July 25, 2000. Each individual or group making an oral presentation will be limited in time based on the agenda and the number of people requesting to speak. Remarks may be submitted for the record. Written comments (30 copies) which are received in enough time will be shared with the Committee prior to the meeting. Comments received close to the meeting date will be shared with the Committee at the meeting.

Matters To Be Considered: Executive Order 13111, Using Technology to Improve Training Opportunities for Federal Government Employees, was issued by the President on January 12, 1999, and established the Presidential Advisory Committee on Expanding Training Opportunities. At its initial meeting, the Committee will review and discuss administrative issues, background matters, tasks, and plans of action. Committee functions include: (1) Providing an independent assessment of (a) progress made by the Federal Government in its use and integration of technology in training programs; (b) how Federal Government programs, initiatives, and policies can encourage or accelerate training technology to provide more accessible, timely, and cost-effective training opportunities for all Americans; (c) mechanisms for the Federal Government to encourage private sector investment in the development of high quality instructional software and wider deployment and use of technology-mediated instruction so that all Americans may take advantage of the opportunities provided by learning technology; and (d) the appropriate Federal Government role in research and development for learning technologies and their applications in order to develop high quality training and education opportunities for all Americans; and (2) an analysis of options for helping adult Americans finance the training and post-secondary education needed to upgrade skills and gain new knowledge.

FOR FURTHER INFORMATION CONTACT: Please contact Barbara Swanson, Designated Federal Officer for the Presidential Advisory Committee on Expanding Training Opportunities, at OPM, 1900 E Street NW., Washington, DC 20415; at telephone (202) 606–2721; or fax (202) 606–5231.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–17460 Filed 7–10–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Approval of Existing Information Collection:

Rule 27e–1 and Form N–27E–1—SEC File No. 270–486—OMB Control No. 3235—new

Rule 27f–1 and Form N–27F–1—SEC File No. 270–487—OMB Control No. 3235—new

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information under the Investment Company Act of 1940 (''Act'') summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27e–1 [17 CFR 270.27e–1] is entitled ''Requirements for Notice to be Mailed to Certain Purchasers of Periodic Payment Plan Certificates Sold Subject to Section 27(d) of the Act.'' Form N–27E–1 is entitled ''Notice to Periodic Payment Plan Certificate Holders of 18 Month Surrender Rights with Respect to Periodic Payment Plan Certificates.'' Rule 27f–1 [17 CFR 270.27f–1] is entitled ''Notice of Right of Withdrawal Required to Be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates.'' Form N–27F–1 is entitled ''Notice to Periodic Payment Plan Certificate Holders of 45 Day

Withdrawal Right with Respect to Periodic Payment Plan Certificates.'' Form N–27E–1, which is prescribed by rule 27e–1 in order to implement the statutory mandate in section 27(e) of the Act, serves to notify holders of periodic payment plan certificates who have missed certain payments of their surrender rights with respect to the certificates. Form N–27F–1, which is prescribed by Rule 27f–1, is used to notify recent purchasers of periodic payment plan certificates, of their right under section 27(f) of the Act to return the certificates within a specified period for a full refund. The Forms N–27E–1 and N–27F–1 notices, which are sent directly to holders of periodic payment plan certificates, serve to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that there are fewer than five issuers of periodic payment plan certificates affected by Rules 27e–1 and 27f–1. The frequency with which each of these issuers or their representatives must file the Form N–27E–1 and Form N–27F–1 notices varies with the number of periodic payment plans sold and the number of certificate holders who miss payments. The Commission estimates, however, that approximately 5,000 Form N–27E–1 notices and 48,900 Form N–27F–1 notices are sent out annually. The Commission estimates that each Form N–27E–1 notices takes approximately 4.5 minutes (0.075 hours) to prepare. Therefore, the total annual burden of Form N–27E–1 is estimated to be approximately 375 hours. The Commission estimates that each Form N–27F–1 notice takes approximately 3.5 minutes (.05833 hours) to prepare. Therefore, the total annual burden of Form N–27F–1 is estimated to be 2,852 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[1]

Complying with the collection of information requirements of Rule 27e–1 is mandatory for issuers of periodic payment plans or their depositors or underwriters in the event holders of plan certificates miss certain payments within eighteen months after issuance. Complying with the collection of information requirements of Rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment. The information provided pursuant to Rules 27e–1 and 27f–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: June 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17468 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

[1] These estimates are based on informal conversations between the Commission staff and representatives of periodic payment plan issuers.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:

Rule 2a19–1; SEC File No. 270–294; OMB Control No. 3235–0332

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 2a19–1 under the Investment Company Act of 1940 (the ''Act'') provides that investment company directors will not be considered interested persons, as defined by section 2(a)(19) of the Act, solely because they are registered broker-dealers or affiliated persons of registered broker-dealers, provided that the broker-dealer does not execute any portfolio transactions for the company's complex, engage in any principal transactions with the complex or distribute shares for the complex for at least six months prior to the time that the director is to be considered not to be an interested person and for the period during which the director continues to be considered not to be an interested person. The rule also requires the investment company's board of directors to determine that the company would not be adversely affected by refraining from business with the broker-dealer. In addition, the rule provides that no more than a minority of the disinterested directors of the company may be registered broker-dealers of their affiliates.

Before the adoption of rule 2a19–1, many investment companies found it necessary to file with the Commission applications for orders exempting directors from section 2(a)(19) of the Act. Rule 2a19–1 is intended to alleviate the burdens on the investment company industry of filing for such orders in circumstances where there is no potential conflict of interest. The conditions of the rule are designed to indicate whether the director has a stake in the broker-dealer's business with the company such that he or she might not be able to act independently of the company's management.

It is estimated that approximately 3,200 investment companies may choose to rely on the rule, and each investment company may spend one hour annually compiling and keeping records related to the requirements of the rule. The total annual burden associated with the rule is estimated to be 3,200 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The Commission requests written comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of

information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: June 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17469 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–05740]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Diodes Incorporated, Common Stock, $.66⅔ Par Value)

July 3, 2000.

Diodes Incorporated (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.66⅔ par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''). Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on June 19, 2000. The Company's Registration Statement on Form 8–A with respect to the Nasdaq listing became effective upon filing on June 15, 2000. In conjunction with creating the new listing on the Nasdaq, the Company is seeking to withdraw its Security from listing and registration on the Amex in order to avoid the costs associated with such listing and to prevent possible fragmentation of the market for its Security.

On February 18, 2000, the Company's board of directors approved a resolution authorizing the withdrawal of the Security from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex would not object to such withdrawal, pending its ultimate approval by the Commission. In the light of the new listing of the Security on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security's from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the Nasdaq under section 12(g) of the Act.[3]

Any interested person may, on or before July 25, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17419 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14204]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (FuelCell Energy, Inc., Common Stock, $.0001 Par Value)

July 3, 2000.

FuelCell Energy, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.0001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company has effected a new listing for its Security on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq''). Trading in the Security on the Nasdaq commenced, and was concurrently suspended on the Amex, at the opening of business on June 7, 2000. The Company's Registration Statement on Form 8–A with respect to the Nasdaq listing became effective upon filing on June 6, 2000. The Company, whose business relates to the development and commercialization of fuelcell technology, has sought to transfer trading in its Security from the Amex to the Nasdaq because it believes the Nasdaq offers the most trading activity and best liquidity for the securities of technology companies.

On March 22, 2000, the Company's board of directors approved a resolution authorizing the withdrawal of the Security from listing and registration on the Amex. The Amex has in turn advised the Company that its application for such withdrawal has been made in accordance with the rules of the Amex and that the Amex would not object to such withdrawal, pending its ultimate approval by the Commission. In the light of the new listing of the Security on the Nasdaq, the Amex has not required the Company to notify its shareholders of its intention to withdraw the Security from listing and registration on the Amex.

The Company's application relates solely to the withdrawal of the Security's from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the Nasdaq under Section 12(g) of the Act.[3]

Any interested person may, on or before July 25, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 781(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–17420 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42997; File No. SR–GSCC–00–01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Financing Necessary for the Provision of Securities Settlement Services

June 30, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 7, 2000, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC proposes to amend its rules to allow it to obtain financing in connection with its securities settlement process by entering into repurchase transactions with GSCC netting members and/or clearing agent bank members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

According to GSCC, it is occasionally required to obtain financing in connection with its securities settlement process. For example, a member with a net short position may deliver securities so near the close of the securities Fedwire that GSCC is unable to redeliver the securities to member(s) with the net long position(s). GSCC's rules contemplate that GSCC will obtain financing under these circumstances in the form of loans, because the rules expressly permit GSCC to grant security interests in the securities in question. The costs or expenses that GSCC incurs in obtaining such financing are generally allocated pro rata among all netting members based upon usage of GSCC's services.[3]

Another example of a situation where GSCC might need to obtain financing is when a GCF inter-dealer broker has a GCF net settlement position as the result of for example, a data submission error. As a result, GSCC is required to finance the settlement of the other-side of the transaction. Again, GSCC's rules currently contemplate that GSCC will obtain the requisite cash or securities through loans or securities borrowing/lending transactions.

GSCC is proposing to amend its rules to give it the option to obtain the requisite financing in the circumstances described above by entering into repurchase transactions with GSCC netting members and/or clearing agent bank members.[4] The ability to enter into repurchase transactions will enable GSCC to obtain more favorable financing terms and thus will result in lower financing costs being allocated to members. Repurchase transactions are a safe, widely accepted financing mechanism. GSCC will engage in such transactions only with highly creditworthy counterparties who are GSCC netting members or GSCC's clearing agent banks.

The proposed rule change also addresses the situation where an inter-dealer broker netting member obtains financing of a net settlement position. For example, an inter-dealer broker may have a net settlement position as the result of an uncompared trade. Under the proposed rule change, the inter-dealer broker-netting member would be required to obtain financing by entering into overnight repurchase transactions with GSCC netting members or clearing agent bank members, and GSCC may reimburse the inter-dealer broker for the costs of such finances if the net settlement position was incurred through no fault of the inter-dealer broker.[5]

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[6] and the rules and regulations thereunder because the proposal will provide GSCC with an additional financing alternative and will result in lower financing costs for GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact, or impose a burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] GSCC's rules also provide that if the GSCC Board determines in its sole discretion that a netting member has on a frequent basis and without good cause caused GSCC to incur financing costs, the member can become obligated to pay for or reimburse GSCC for the entire amount of the financing costs.

[4] GSCC already has the authority to enter into repurchase agreements in connection with clearing fund deposits and proprietary funds.

[5] GSCC may also reimburse certain dealer netting members in a similar situation. This additional possibility for remibursement would apply to a division or other separate operating unit within a dealer netting member that GSCC has determined: (a) operates in the same manner as a broker and (b) has agreed to, and does, participate in the repo netting service pursuant to the same requirements imposed under GSCC's rules on inter-dealer broker netting members that participate in that service.

[6] 15 U.S.C. 78q–1.

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–01 and should be submitted by August 1, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17421 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42996; File No. SR–GSCC–00–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Accepting Mortgage-Backed Securities for Processing in the GCF Repo Service

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 1, 2000, Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to accept non-Fedwire eligible mortgage-backed securities for processing in GSCC's GCF Repo Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC introduced its GCF Repo Service in November 1998.[3] The GCF Repo Service allows GSCC's non-inter-dealer broker netting members (''dealers'') to trade general collateral repos involving U.S. Government securities throughout the day without requiring trade for trade settlement on a delivery versus payment basis.

GSCC has been activating the generic CUSIP numbers representing the securities that are eligible for GCF Repo processing in stages. U.S. Treasury securities with a maturity of ten years or less and U.S. Treasury securities with a maturity of thirty years or less were the first products to be made eligible for GCF Repo processing. At the beginning of this year, GSCC also began accepting non-mortgage-backed agency securities for GCF Repo processing and then more recently began accepting mortgage-backed securities ''MBS'') for GCF Repo processing.[4]

GSCC members active in the MBS markets have expressed an interest, both directly and through The Bond Market Association, in having GSCC process all types of MBS, especially those issued by the Government National Mortgage Association (Commonly referred to as ''GNMAs'').[5] Because these members engage in transactions involving all types of MBS, not just Fedwire-eligible MBS, they desire to have the risk reducing benefits associated with GSCC processing extend to GCF Repo transactions involving non-Fedwire-eligible MBS.

When GSCC submitted its original GCF Repo rule filing to the Commission, it only contemplated Fedwire-eligible securities (treasuries, agencies, and certain MBS) as eligible products. In response to the industry demand, GSCC desires to expand the acceptable types of underlying securities processed in the GCF Repo Service to include all types of MBS, not just Fedwire-eligible MGS.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will enhance the GCF Repo Service by making it more responsive to the needs of GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii)[6] of the Act and Rule

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] On November 5, 1998, the Commission approved a rule change (Release No. 34–40623, File No. SR–GSCC–98–02) that allowed GSCC to implement the GCF Repo Service on an intrabank basis. On April 16, 1999, the Commission approved a rule change (Release No. 34–41303, File No. SR–GSCC–99–01) that allowed GSCC to implement an enhancement to the GCF Repo Service to enable participating dealers to engage in GCF Repo trading with participating dealers that use a different clearing bank.

[4] On March 20, 2000, GSCC activated the generic CUSIP number representing Federal Home Loan Mortgage Corporation and Federal National Mortgage Association fixed-rate MBS.

[5] The Government National Mortgage Association recently announced that it has decided to move its NBS clearance and settlement activities to the Federal Reserve System. No specific timetable has been specified for this move which will make GNMAs Fedwire-eligible.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

19b–4(f)(4)[7] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–04 and should be submitted by August 1, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17422 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 240.19b–4(f)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43001; File No. SR–NASD–00–41]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SelectNet Fees

June 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 29, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to: (1) Extend the reduced SelectNet fee pilot program under NASD Rule 7010(i) from April 1, 2000 until March 31, 2001, or through the date of implementation of the Nasdaq National Market Execution System (''Implementation Date,'' currently expected to be July 10, 2000), whichever is sooner; and (2) beginning on the Implementation Date, to (a) reduce the fees currently charged under NASD Rule 7010(i) for the execution of transactions in SelectNet; (b) reduce the fees currently charged under NASD Rule 4770(a) for the execution of transactions in the Small Order Execution System for Nasdaq SmallCap issues; and (c) establish that the fees charged for the execution of transactions in Nasdaq National Market issues in the Nasdaq National Market Execution System, will be identical to the fees charged for transactions in the Small Order Execution System (''SOES'') for Nasdaq SmallCap issues.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

Nasdaq proposes to again extend its current reduced SelectNet fees.[4] The reasons for Nasdaq's prevailing SelectNet fee structure were fully explained in its original fee structure proposal filed with the Commission in February of 1998.[5] Since then, SelectNet usage has continued at significantly elevated levels. As such, Nasdaq believes that an extension of these reduced fees through the Implementation Date is warranted.

Under the proposal, from April 1, 2000 until march 31, 2001, or until the Implementation Date, whichever is sooner, SelectNet fees would continue to be assessed in the following manner:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that Nasdaq filed a virtually identical proposal, SR–NASD–00–29, on May 24, 2000. In SR–NASD–00–29, Nasdaq proposed to amend its SelectNet fees in the same manner that it proposes to amend these fees in this filing. SR–NASD–00–29 was filed under Section 19(b)(3)(A) of the Act and, therefore, was effective upon filing. Among other things, Nasdaq proposed in SR–NASD–00–29 that its reduced SelectNet fees, which were subject to a pilot program, continue from the date of the filing, May 24, 2000. The pilot program, however, expired on March 31, 2000. When Commission staff brought this to the attention of Nasdaq expressed its desire to have the reduced fees apply retroactively from April 1 to May 23, 2000. After consultation with the Commission staff, Nasdaq filed this proposal, SR–NASD–00–41, to replace SR–NASD–00–29. Because the proposals are virtually identical except for Nasdaq's request in SR–NASD–00–41 that the reduced fees apply retroactively, the Commission has determined not to publish SR–NASD–00–29. Nevertheless, the public can receive a copy of it from the NASD or from the Commission's public reference room.

[4] Nasdaq represents that this rule supersedes SR–NASD–00–29, which Nasdaq submitted on May 24, 2000. According to Nasdaq, SR–NASD–00–29 proposed to extend the pilot program reducing SelectNet fees, but did not explicitly state that the pilot expired on March 31, 2000, and that the pilot should apply retroactively as of April 1, 2000. At the request of Commission staff, Nasdaq is submitting this filing to clarify these facts.

[5] *See* Securities Exchange Act Release No. 39641 (February 10, 1998), 63 FR 8241 (February 18, 1998). Nasdaq's current reduced fee structure was originally approved for a 90 day period. The last extension of this pilot occurred in April of 1999, and the pilot expired on March 31, 2000. According to the April 1999 extension, the SelectNet fees were supposed ''to revert to their original $2.50 per-side level on April 1, 2000'' if Nasdaq took no action. *See* Securities Exchange Act Release No. 41314 (April 20, 1999); 64 FR 22664 (April 27, 1999).

(1) $1.00 will be charged for each of the first 50,000 SelectNet orders entered and directed to one particular market participant that is subsequently executed in whole or in part, $.70 for the next 50,000 directed orders executed that same month, and $.20 for each remaining directed order executed that same month; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; and (4) a $0.25 fee will remain in effect for any member who cancels a SelectNet order. Nasdaq will continue to monitor and review SelectNet activity to determine if further changes to the SelectNet fee structure are appropriate.

On January 14, 2000, the Commission issued an order approving rule changes that: (1) Establish the Nasdaq National Market Execution system (''NNMS''), a new platform for the trading of Nasdaq National Market (''NNM'') securities; (2) modify the rules governing the use of SelectNet for trading NNM issues; and (3) leave unchanged the trading of Nasdaq SmallCap securities on the Small Order Execution system (''SmallCap SOES'').[6] Nasdaq currently plans to implement these system changes on July 10, 2000.

The NNMS will be the primary trading platform for Nasdaq NNM issues. The NNMS will be based on the SOES architecture that currently exists, but will be enhanced in several ways: (1) The maximum order entry size will be 9,900 shares for NNM securities; (2) market participants (including market makers) will be able to use Nasdaq's automated execution systems on a proprietary basis for transactions in NNM securities; (3) the time delays between NNM executions against the same market maker on ECN participating in the NNMS will be reduced to 5 seconds; (4) NNMS will include a reserve-size functionality, which will be accessible on an automated basis; and (5) eliminating the ''No Decrementation'' and preferencing functionality that currently exist in SOES.

SelectNet generally will be used to deliver negotiable orders to market makers and ECNs that participate in the NNMS. SelectNet orders will no longer be ''liability orders.'' SelectNet will accept entry of orders directed to specific market makers in NNM securities only if such orders: (1) Seek at least 100 shares more than the displayed amount of the quote to which they are directed; and (2) are designated as either ''all-or-none'' or ''minimum acceptable quantity'' for at least 100 shares more than the quoted size. SelectNet will automatically reject preferenced messages not meeting these conditions. Recipients of SelectNet orders will then have the option to execute the order, initiate electronic negotiation, or let the order expire. Market participants will still use SelectNet to deliver liability orders to order-entry ECNs and UTP Exchanges.

It is expected that much of the trading volume in NNM securities will migrate from SelectNet to the NNMS, due largely to the elimination of the liability aspect of SelectNet. The proposed pricing structure reflects this shift by removing from NNMS the $.50 per order fee that market participants currently pay for receiving a SOES execution, and also in the addition of volume discounts. Thus, market participants will pay $.50 per execution for executed orders of under 2000 shares, with a discounted price of $.30 for any order after 150,000; $.90 for orders over 2000 shares. Nasdaq believes that this will encourage the entry of quotes into the Nasdaq system, and thereby increase liquidity in the Nasdaq Stock Market.[7]

Beginning on the Implementation Date, SelectNet fees would be assessed in the following manner: (1) $.90 will be charged for each SelectNet order entered and directed to one particular market participant that is subsequently executed in whole or in part; (2) no fee will be charged to a member who receives and executes a directed SelectNet order; (3) the existing $2.50 fee will remain in effect for both sides of executed SelectNet orders that result from broadcast messages; (4) market participants will be assessed $.70 per order for the first 25,000 orders executed monthly, $.50 per order for the next 25,000 orders executed monthly, and a $.10 for each remaining liability order executed monthly; and (5) a $0.25 fee will remain in effect for any member who cancels a SelectNet order.

Nasdaq proposes to charge the same fees for trades of both Nasdaq SmallCap and NNM securities. To accomplish this, Nasdaq proposes to reduce the fees charged for trades of SmallCap Securities through SOES. Beginning on the Implementation Date, fees for NNMS trades of NNM securities and SOES trades of SmallCap securities will be assessed in the following manner: (1) A fee of $.50 per order executed for the first 150,000 orders executed under 2000 shares monthly; (2) a fee of $.30 for all remaining orders executed less than 2000 shares monthly; (3) a fee of $.90 per order for all orders over 2000 shares; and (4) no fee will be charged to a member who receives an execution in SOES or NNMS.

2. Statutory Basis

For the reason set forth above, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competiton

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or charge imposed by the Association, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

[6] *See* Securities Exchange Act Release No. 42344 (January 14, 2000); 65 FR 3987 (January 25, 2000).

[7] Nasdaq believes that the fee changes will have a revenue-neutral effect. Telephone conversation between Jeffrey S. Davis, Assistant General Counsel, Nasdaq, and Joseph Corcoran, Attorney, Division of Market Regulation, Commission, on June 28, 2000.

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

450 Fifth Street, NW., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–41 and should be submitted by August 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–17423 Filed 7–10–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3a(a)(12).

DEPARTMENT OF STATE

[Public Notice 3361]

Determinations on Export-Import Bank Financing in Support of Sale of Helicopters to Colombia

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, and Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, I hereby determine that:

(1) The defense articles and services for which the Government of Colombia has requested Export-Import Bank (Ex-Im) financial guarantees, fourteen UH–60 (Blackhawk) helicopters, are to be used primarily for anti-narcotics purposes;

(2) The sale of such defense articles and services would be in the national interest of the United States;

(3) The Government of Colombia has complied with all U.S.-imposed end-use restrictions on the use of defense articles and services previously financed under the Act; and

(4) The Government of Colombia has not used defense articles or services previously provided under the Act to engage in a consistent pattern of gross violations of internationally recognized human rights.

The determinations shall be reported to Congress and shall be published in the **Federal Register**.

Dated: May 22, 2000.

Madeleine Albright,

Secretary of State.

[FR Doc. 00–17475 Filed 7–10–00; 8:45 am]

BILLING CODE 4710–07–U

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of Meeting.

SUMMARY: The Regional Resource Stewardship Council (Regional Council) will hold a meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA).

The meeting agenda includes the following briefings:

1. Watershed Teams
2. Stewardship Planning
3. Shoreline Management
4. 26a Permitting
5. Subcommittee Reports

It is the Regional Council's practice to provide an opportunity for members of the public to make oral public comments at its meetings. However, due to the short meeting time, an opportunity for members of the public to make oral public comments at the meeting will not be provided. Written comments, however, are invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held in two sessions on July 28, 2000, from 8 a.m. to 9:45 a.m. and from 3:15 p.m. to 5 p.m. EDT.

ADDRESSES: The meeting will be held in Knoxville, Tennessee, in the West Tower Auditorium at the Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902–1499, (865) 632–2333.

Dated: June 30, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 00–17484 Filed 7–10–00; 8:45 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

COUNCIL ON ENVIRONMENTAL QUALITY

Request for Public Comment: Draft Guidelines for Implementation of Executive Order 13141: Environmental Review of Trade Agreements Notice of Public Hearing

AGENCY: Office of the United States Trade Representative and Council on Environmental Quality

ACTION: Notice of request for written public comment; notice of public hearing

SUMMARY: On November 16, 1999, President Clinton signed Executive Order 13141. 64 FR 63169 (Nov. 18, 1999). The Order makes explicit the United States' commitment to a policy of ongoing assessment and evaluation of the environmental impacts of trade agreements, and in certain instances, the conduct of written environmental reviews. The Order directs the Office of the United States Trade Representative (USTR) and the Council on Environmental Quality (CEQ) to oversee implementation of the Order, including the development of procedures pursuant to the Order.

This notice seeks public comment on draft Guidelines for implementing the Executive Order. USTR and CEQ developed the draft Guidelines through an extensive interagency process with active participation from interested foreign policy, environmental, and economic agencies. USTR and CEQ also solicited input from advisory committees and the public. 65 Fed. Reg. 9757 (Feb. 22, 2000). The resulting draft Guidelines endeavor to assure that consideration of the environmental implications of trade agreements is an integral part of the policymaking process, and that environmental analysis is undertaken sufficiently early to inform the development of U.S. negotiating positions and objectives. Further, the draft Guidelines make public participation an integral component.

FOR FURTHER INFORMATION CONTACT: Office of the U.S. Trade Representative, Environment and Natural Resources Section, telephone 202–395–7320, or Council on Environmental Quality, telephone 202–456–6224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 13141 and the Trade Policy Staff Committee (TPSC) Process

The United States has relevant experience with environmental reviews of trade agreements, including the North American Free Trade Agreement in 1991–92 and the Uruguay Round Agreements in 1994. Most recently, in November, 1999, the United States prepared a study of the economic and environmental effects of the proposed Accelerated Tariff Liberalization initiative with respect to forest products. Building on this experience, Executive Order 13141 institutionalizes, for the first time, the procedures for integrating consideration of environmental issues into the negotiating process. The Order recognizes that environmental reviews are an important tool to help identify potential environmental effects of trade agreements, both positive and negative, and to help facilitate consideration of appropriate responses to those effects whether in the course of negotiations, through other means, or both.

Sections 1 and 4(a) of the Order commit the United States to careful assessment and consideration of the environmental impacts of future trade agreements, including environmental reviews of certain major agreements (comprehensive multilateral trade rounds, multilateral or bilateral free trade agreements, and major new agreements in natural resource sectors). Further, Section 4(c) of the Order provides that environmental reviews may also be done for other agreements based on such factors as the significance of reasonably foreseeable environmental impacts, although it is anticipated that most sectoral liberalization agreements will not require reviews.

Pursuant to section 5(a) of the Order, reviews shall be written; initiated through a **Federal Register** notice outlining the proposed agreement and soliciting public comment and information on the scope of the review; and undertaken sufficiently early in the process to inform the development of negotiating positions. This section of the Order also acknowledges that the environmental review process shall not be a condition for the timely tabling of particular negotiating proposals. Written environmental reviews shall be made available in draft form for public comment where practicable, and shall be made available to the public in final form. Section 5(b) of the Order provides that, as a general matter, the focus of reviews will be on impacts in the United States; however, reviews may also examine global and transboundary impacts as appropriate and prudent.

In accordance with the Order, environmental reviews will be conducted by USTR through the Trade Policy Staff Committee (TPSC). The TPSC is the basic mechanism for interagency decisionmaking on U.S. trade policy. It is a senior-civil-servant-level committee established by section 242 of the Trade Expansion Act of 1962, as amended (19 U.S.C. section 1872). The composition of the TPSC includes environmental agencies as the scope of its work has expanded. The basic work of the TPSC is performed by a network of staff-level subcommittees and task forces, organized by geographical region and/or sector. The committees prepare recommendations on subjects within their purview (*e.g.,* instructions to negotiators on specific issues relevant to a given trade agreement). These recommendations take the form of a paper, which then must be cleared by agencies on the TPSC.

B. Public Comments and Advisory Committee Recommendations

On February 22, 2000, USTR and CEQ requested the views of the public concerning issues the agencies should consider when developing guidelines for implementing the Order, including general views on how the environmental review process should work; mechanisms for involving the public; the timing and process for conducting written reviews; and appropriate methodologies for assessing environmental impacts in the context of trade negotiations. 65 Fed. Reg. 9757. Twenty-two sets of comments were received from a broad spectrum of the public, including representatives of industry, agriculture, and environmental organizations. USTR's advisory committee, the Trade and Environment Policy Advisory Committee (TEPAC), also submitted recommendations (with one dissent) concerning implementation of the Order.

The process for developing the draft Guidelines (attached below) involved vigorous discussions and input from a broad spectrum of agencies and interested parties. The resulting draft endeavors to strike a careful balance assuring that environmental issues are factored into the development of U.S. negotiating objectives and positions, while also providing sufficient flexibility to address the wide variety of trade agreements and negotiating timetables. The draft Guidelines also take into account significant public comments received, including advisory committee recommendations. Following is a summary of how public comments have been addressed in the draft.

1. General Comments

In general, public comments supported the Executive Order's objective of integrating environmental considerations into the development of trade negotiating objectives and positions. Some commenters emphasized that reviews should be a proactive tool for improving environmental performance through trade policy development, and that public involvement was critical to restore public confidence in trade liberalization as a national goal. They also stressed the importance of a process of ongoing assessment and evaluation of the environmental implications of trade agreements (including agreements that do not receive a review). Other commenters urged that reviews consider the potential environmental benefits as well as potential negative impacts of trade liberalization, and stressed that the Guidelines should not set the bar so high that reviews become a deterrent to trade rather than a beneficial analytical tool. Almost all commenters emphasized the use of the environmental review process to identify ''win-win'' opportunities where opening markets and reducing or eliminating subsidies hold promise for yielding environmental benefits.

In response, the draft Guidelines provide that positive as well as negative environmental impacts will be considered in reviews, and recognize that reviews should be used as appropriate to identify areas in which the trade agreement can complement U.S. environmental objectives. Further, they envision that public input is an essential component of the review and provide for public participation at key points in the review process, including opportunities to comment on the scope of the review and, in most cases, on a draft review document. While the focus of the Executive Order, and therefore of the draft Guidelines, is necessarily on agreements that warrant an environmental review, the draft Guidelines also clarify the process of ongoing environmental evaluation and assessment applicable to all agreements.

2. Specific Issues

Regarding specific issues, TEPAC and a number of commenters stressed the importance of initiating the reviews as early as feasible in the process in order to maximize the usefulness of environmental analysis in informing negotiating positions. The draft Guidelines incorporate this approach, though they recognize that no bright

line test is possible and that there should be sufficient information available about the United States' negotiating objectives to make analysis meaningful.

TEPAC and a number of commenters emphasized the importance of determining the appropriate scope of the environmental review (''scoping''). As a result, the draft Guidelines endeavor to address the scoping process in detail. They provide for early involvement of interested agencies and the public to help assure that significant issues are identified early in the process and that government resources are targeted effectively.

Commenters differed over whether reviews should normally examine environmental impacts outside the United States. TEPAC and several commenters recommended that reviews should presumptively examine such effects, while other commenters contended that examination of effects outside the United States should be limited. Consistent with the Executive Order, the draft Guidelines acknowledge that domestic impacts are the primary concern and priority of the reviews. However, the draft Guidelines provide that global and transboundary impacts will be included in the scoping process for every review, including opportunity for public input. The draft Guidelines further elaborate on some of the considerations relevant to inclusion of global and transboundary impacts in a review.

Several commenters contended that reviews should be presumptively done for agreements covered by Section 4(c) of the Order (for which reviews are not mandated), while other commenters generally favored a more limited application. The draft Guidelines provide that USTR, through the TPSC, will conduct an objective process for making decisions whether to conduct a review for a Section 4(c) agreement, and make the significance of reasonably foreseeable environmental impacts an essential criterion in such decisions. The draft Guidelines elaborate on considerations relevant to the assessment of significance, as well as noting operational constraints that may be appropriate to consider in certain circumstances. Further, the draft Guidelines provide that a decision not to conduct a review for a Section 4(c) agreement does not relieve agencies of their obligation to consider environmental issues under the process of ongoing assessment and evaluation applicable to all trade agreements.

A number of commenters suggested that the reviews should include an examination of changes expected to occur as a result of the trade agreement compared with the situation assuming no trade agreement. In order to accomplish this and to isolate any environmental impacts resulting from the proposed trade agreement from the other sources of environmental change, the draft Guidelines provide that environmental impacts will be analyzed in comparison to a base or baseline scenario.

Finally, many commenters acknowledged that prescription of a particular methodology for environmental review of trade agreements is not possible, given the variety of trade agreements and the emerging state of methodological development. However, they stressed that methodologies should be objective and science-based. The draft Guidelines provide that analysis should be based on scientific information and principles, documented experience, and objective data, while acknowledging assumptions and uncertainties in methodologies or data. TEPAC also recommended that interested agencies identify sources of data and analytical methodologies within and outside of the U.S. government, which could serve as a basis for specific environmental analyses. In response, the draft Guidelines provide that agencies should use best efforts to develop such assessment capacity.

Requests To Participate in Public Hearing

A public hearing will be held on Wednesday and Thursday, August 2 and 3, 2000, beginning at 9:30 am, at 1724 F Street NW., Washington, DC 20508. Persons wishing to provide oral testimony should provide written notification of their intention by Tuesday, July 25, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, room 122, 600 Seventeenth Street, NW., Washington, DC 20508. The notification should include: (1) the name, address and telephone number of the person presenting the testimony; and (2) the organization represented, if any.

Parties presenting oral testimony should also submit a written statement, in 20 copies, by Monday, July 31, 2000, to Gloria Blue at the above address. Remarks at the hearing should be limited to no more than ten minutes to allow for possible questions from the Chairs and the interagency panel. Participants should provide 20 typed copies of their oral statement.

Submission of Written Comments

Persons wishing to submit written comments on the draft Guidelines in response to this notice should provide 20 copies no later than Friday, August 25, 2000. Comments should be addressed to Gloria Blue at the above address, marked ATTN: Draft Guidelines for Implementation of Executive Order 13141—Environmental Review of Trade Agreements.

Submissions will be available for public inspection at the USTR Reading Room, Room 101, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

Dinah Bear,

General Counsel, Council on Environmental Quality.

Guidelines for Implementation of Executive Order 13141

I. Purpose of the Guidelines

1. The purpose of these Guidelines is to implement Executive Order 13141, Environmental Review of Trade Agreements. They are meant to ensure that consideration of reasonably foreseeable environmental impacts of trade agreements (both positive and negative), and identification of complementaries between trade and environment objectives, are consistent and integral parts of the trade and environmental policymaking process.

II. Environmental Review of Trade Agreements

1. Section 4(a) of the Executive Order identifies three categories of agreements for which an Environmental Review (ER) is mandated: (1) Comprehensive multilateral trade rounds; (2) bilateral or plurilateral free trade agreements; and (3) major new trade liberalization agreements in natural resource sectors.

2. Section 4(c) of the Executive Order provides that ERs may also be done for other agreements. The decision whether to conduct an ER in such cases shall be based on an objective assessment of the particular agreement.

3. The significance of reasonably foreseeable environmental impacts shall be an essential factor in determining whether to conduct an ER for Section 4(c) agreements. The assessment of this factor shall include consideration of the following:

a. The extent to which the agreement might affect environmentally sensitive resources and/or result in substantial changes in trade flows of products or services that could confer environmental harms or benefits;

b. The extent to which the agreement might affect U.S. environmental laws, regulations, policies, and/or international commitments; and

c. The magnitude and scope of reasonably foreseeable environmental impacts.

4. In certain circumstances, it may be appropriate also to consider operational constraints when determining whether to conduct an ER for Section 4(c) agreements. Such constraints may relate to the negotiation timetable, the lack of available relevant data and analytical tools, and the relative priority among competing needs for environmental expertise in trade-related activities.

5. The Executive Order anticipates that most sectoral liberalization agreements will not require an ER because it is expected that they are unlikely to result in significant environmental impacts.

6. A decision not to conduct an ER for a Section 4(c) agreement will not relieve the Federal government of the obligation to consider environmental issues under the process of ongoing assessment and review applicable to all trade agreements, *see* Section VIII. The decision not to conduct an ER may be reassessed as appropriate.

III. Initiation of the Written Environmental Review Process

A. General Principles

1. The overarching goal of the ER process is to ensure that, through the consistent application of principles and procedures, environmental considerations are integrated into the development of U.S. positions in trade negotiations. In order to accomplish this goal, the ER process should be initiated early enough to maximize the usefulness of environmental information and analysis for informing negotiating positions.

2. Pursuant to Section 5 of the Executive Order, the ER process shall not be a condition for the timely tabling of specific negotiating position.

B. Process Considerations

1. USTR, through the Trade Policy Staff Committee (TPSC) interagency process, shall initiate the ER process with a notice in the **Federal Register** as soon as possible once sufficient information exists concerning the scope of the proposed trade agreement. *See* Appendix A.

2. Environmental issues shall be analyzed by the relevant TPSC subcommittee(s) conducting the negotiation or, as appropriate, by a working group under the subcommittee established for such purpose. For purposes of these Guidelines, the term Environmental Review Group (ERG) refers to any TPSC group tasked with the environmental review of trade agreements under these Guidelines.

3. In order to expedite the initiation of the ER process for a particular trade agreement, it may be desirable to analyze discrete aspects of the proposed agreement as sufficient information becomes available. In all cases, the final ER document should address identified environmental impacts in a comprehensive manner.

4. For some agreements that fall under Section 4(c) of the Executive Order, the need for an ER may not be identified until after specific negotiating positions have been established or are under development. In such cases, the ER process shall be initiated as soon as feasible thereafter.

IV. Determining the Scope of the Environmental Review

A. General Principles

1. In order to target governmental resources effectively, the scope of the ER must be considered in advance of the analysis of potential environmental impacts. The early involvement of interested agencies and the public in the scoping process helps assure that the analysis is adequate and that issues are identified early in the process.

2. The scoping process involves the identification of significant issues to be analyzed in depth in the ER, along with the elimination from detailed study of those issues which are not significant or have been covered by prior reviews.

3. Scoping includes consideration of the environmental dimensions of the regulatory and trade policies at issue, including ways in which the trade agreement can complement U.S. environmental objectives.

4. USTR, through the TPSC, shall request public comment on the scope of the ER through the **Federal Register** Notice of Initiation, and shall seek the views of advisory committees, including the Trade and Environment Policy Advisory Committee (TEPAC). *See* Section VI and Appendix A.

B. The Scoping Process

1. Overview

a. The scoping process for the ER has two principal components: (i) identification of issues; and (ii) prioritization of issues. The first component focuses on soliciting input and determining the types of environmental impacts that could result from the proposed trade agreement. The second component focuses on prioritizing the significant issues that should be analyzed to determine environmental consequences of the trade agreement. The result of an effective scoping process is a targeted, analytical work plan.

b. Issue identification and prioritization is an iterative process. Negotiating positions are likely to undergo continual adjustment until the agreement is completed. The steps taken to establish the scope of the ER may, therefore, be revisited throughout the process.

2. Identification of Issues

a. This step in the scoping process is meant to identify the range of possible environmental concerns. However, not all issues identified will necessarily be analyzed in the ER. The second step in the scoping process, issue prioritization (described below), will be used to select important issues warranting analysis.

b. Solicitation of Information

(1) The scoping process shall draw upon the knowledge of any agency with relevant expertise in the subject matter under consideration, as well as the views of the public and advisory committees.

c. Information Relevant to Scoping

(1) Three types of information shall be considered when determining the scope of the ER:

(a) The scope and objectives of the proposed trade agreement;

(b) A realistic range of alternative approaches for accomplishing the broad objectives of the trade agreement; and

(c) Types of reasonably foreseeable environmental impacts.

d. Scope of the Proposed Trade Agreement

(1) The scope of the ER is a function of the scope of the proposed trade agreement. Thus, the ERG shall maintain continuing awareness of the negotiation goals as they evolve. Relevant TPSC working groups should confer with the ERG to ensure that the scope of the ER properly reflects emerging environmental issues.

e. Alternative Negotiating Approaches

(1) Where a range of alternative negotiating approaches is under consideration for accomplishing the broad objectives of the trade agreement, the scoping process should be used to gain an understanding of important

elements likely to be at issue in the negotiations.

(2) Negotiating approaches identified for analysis shall be compared with a base or baseline scenario. Alternative approaches may also include consideration of methods for addressing positive and negative environmental impacts. *See* Section V.

f. Types of Reasonably Foreseeable Environmental Impacts

(1) During the initial stages of scoping, a range of reasonably foreseeable environmental impacts (both positive and negative) should be considered for inclusion in the ER. *See* Appendix B. Later, as scoping progresses, some of the identified impacts may be eliminated from consideration through the process of prioritization described below.

(2) Domestic impacts are necessarily the primary concern and priority of the Executive Order and these Guidelines. However, the scoping process shall also consider pursuant to Section IV.B.4, whether it is appropriate and prudent to examine global and transboundary impacts.

(3) The ERG may consult, consistent with existing legal requirements, with academic, federal, state or local entities, and/or other interested groups that have relevant experience with economic and environmental analyses and modeling techniques.

3. Prioritization of Issues and Considerations for Establishing Scope

a. Once the environmental issues have been sufficiently identified, the ERG shall prioritize the issues and establish the scope of the ER.

b. Considerations for establishing ER scope include:

(1) The relative importance placed on a particular issue by governmental agencies, the informed public, and/or advisory committees;

(2) Availability of analytical tools capable of assessing environmental impacts at an adequate level of detail; and

(3) Existence of opportunities for building on or incorporating by reference work already performed or being performed elsewhere in the interagency process.

4. Special Considerations for the Scoping of Global and Transboundary Impacts

(1) The scoping process for every ER shall examine whether it is appropriate and prudent to examine such global and transboundary impacts.

(2) Evaluation of whether it is appropriate and prudent to examine global and transboundary impacts shall include consideration of the following:

(a) scope and magnitude of reasonably foreseeable global and transboundary impacts;

(b) implications for U.S. international commitments and programs for international cooperation;

(c) availability of necessary data and analytic tools for addressing impacts outside the U.S.;

(d) diplomatic considerations;

(e) availability of government resources.

V. Analytical Content

A. General Principles

1. Since trade agreements exhibit broad variation, and because the science of environmental impact modeling is rapidly evolving, it is likely that each ER will incorporate uniquely tailored analytical approaches. A different mix of analytical methodologies will be needed for different types of trade agreements.

2. Analysis shall be both qualitative and quantitative and environmental impacts should be analyzed on the basis of scientific information and principles, documented experience and objective data. The analytical process should take into consideration assumptions and/or uncertainty in the data and methodologies and document any limitations due to those assumptions or uncertainties.

B. Analysis of Regulatory Environmental Impacts

1. The ER shall examine the extent to which the trade agreement has impacts on U.S. environmental laws and obligations. Examples of such impacts include the ability to maintain, strengthen and enforce laws, regulations and policies on pollution control; control of toxic and hazardous wastes and materials; protection of natural resources, wildlife and endangered species; product standards relevant to human health, safety, and the environment; control and regulation of pesticides; food safety; and the public's ability to obtain information regarding the environment.

C. Analysis of Economically Driven Environmental Impacts

1. The ER shall examine the extent to which environmental impacts may flow from economic changes estimated to result from the trade agreement. Application of modeling techniques may provide a useful approach for estimating such environmental impacts. However, modeling and other economic analytical techniques, in and of themselves, are unlikely to provide an exclusive means for assessing areas of environmental concern. For example, prevailing tools for assessing the economic effect of comprehensive trade agreements rely on aggregation of resource sectors to estimate broad trends, while estimates of environmental impact generally benefit from a more local or regional analysis.

2. Environmental impacts will be analyzed in comparison to a base or baseline scenario. Such a comparison shall take into account that changes are likely to occur in the economy and the environment even in the absence of the proposed trade agreement.

D. Identifying Ways To Address Environmental Impacts

1. Where significant environmental impacts have been identified, there shall be an analysis of options to mitigate negative impacts and create or enhance positive impacts. Options may include both changes to negotiating positions and also measures outside the trade agreement, including possible changes or additions to relevant U.S. environmental laws, regulations, policies, and other existing measures. To the extent possible, costs and benefits associated with various forms of mitigation or enhancement should also be assessed.

2. Where options that address identified impacts are described in the ER document, they may include options for post-agreement actions for agencies to consider, such as actions to assess the accuracy of the analysis.

VI. Public Participation

1. Provision for public participation in the review and assessment of environmental impacts of trade agreements is an essential component of these Guidelines, and is meant to ensure that the public and the government benefit from an open and inclusive process of trade policy development. In addition to public participation, the ERG shall also consult with advisory committees.

2. Procedures for public participation should be flexible, not excessively burdensome, and responsive to needs for expedited action and confidentiality. The period for public comment will normally be forty-five days, unless a shorter or longer period is appropriate.

3. Public notification shall be far enough in advance of critical junctures that, to the extent practicable, the public has a reasonable opportunity to prepare and submit comments to be taken into account during the ER process. Appendix A provides guidance on the types and content of public notification.

4. Public hearings, notices in relevant publications, web site postings, and other mechanisms shall be employed as appropriate and feasible. When the negotiating timetable permits, a public hearing or hearings shall normally be scheduled.

VII. Documentation of the Environmental Review Process

A. General Principles

1. The primary purpose for documenting the ER is to memorialize the process and explain the rationale for the conclusions reached. Documentation also provides numerous opportunities for integrating environmental considerations into negotiating positions. To that end, the Draft ER, along with public comments, shall serve as a means of informing the negotiation process.

2. In addition to informing the public, the Final ER should serve as a record for subsequent ERs so that lessons can be learned and information drawn from the effort.

3. In order to factor environmental considerations into the development of trade negotiations, relevant work products resulting from the ER process should be completed far enough in advance to be of benefit to the U.S. trade negotiators. However, pursuant Section 5 of the Executive Order, completion of ER documentation shall not be a condition for the timely tabling of specific negotiating positions.

4. The need for confidentiality shall be taken into account when developing ER documentation.

B. The Environmental Review Documents

1. Consistency in the ER process, to the extent allowed by variations in trade agreements, should be reflected through a consistent documentation format and content. Appendix C provides information on the structure and content that shall normally be followed for draft and final ER documents.

2. All ER documentation shall be written in plain language and shall provide the rationale for the scope of the analysis and the selected methodology. The ER documents shall also include a summary of key points raised in public comments.

3. A Draft ER document for public comment shall normally be prepared. However, in unusual circumstances, such as when a trade agreement is to be completed under a compressed negotiating schedule, a Draft document may not be possible. In such cases, the Final ER document shall be issued publically as soon as is feasible following the conclusion of the trade agreement.

4. As deemed appropriate by USTR through the TPSC process, amended ER document(s) (draft and/or final) may be completed and made available to the public when negotiations lead to a trade agreement with environmental implications that are substantially different from those analyzed.

VIII. The Process of Ongoing Environmental Assessment and Evaluation

1. It is the continuing responsibility of the Federal government to factor environmental considerations into the development of its trade negotiating objectives and positions. This is accomplished for all trade agreements through a process of ongoing assessment and evaluation, including those cases where an ER is not conducted.

2. USTR shall facilitate the process of ongoing assessment and evaluation of trade agreements through early consultations with interested agencies, advisory committees and the public. In notices USTR issues requesting comment on broad issues early in the development of a trade agreement, USTR shall also normally request comment on environmental issues.

3. Agencies should bring important environmental issues to the attention of the relevant TPSC subcommittee(s). If post-agreement actions are warranted or desirable, they may be undertaken by the responsible agency.

4. Agencies shall use best efforts to identify sources of data and analytical methodologies available within and outside of the U.S. government, which would then provide a foundation for subsequent specific environmental analyses. A list of such sources shall be created and made available to the public. The list may be updated over time, including on the basis of comments from the public.

IX. Administrative Considerations

A. Roles and Responsibilities

1. Regardless of whether a written ER is mandated, USTR shall initiate the TPSC process for examining environmental issues as early as feasible in the consideration of potential trade agreements. For those agreements falling within the 4(c) category, USTR, through the TPSC, shall also determine whether an agreement warrants an ER. The decision whether to proceed with an ER shall be reflected in the TPSC paper(s) initiating negotiations. These paper(s) shall include, as appropriate, discussion of the environmental issues identified at this early stage in the TPSC process, and recommendations on how they should be addressed.

2. USTR, through the TPSC, shall conduct the ER. Environmental issues shall be analyzed by the relevant TPSC subcommittee(s) conducting the negotiation and/or, as appropriate, an ERG established for such purpose. Membership in the ERG shall be open to all interested agencies, and shall include, at a minimum, those agencies with relevant expertise in economic and environmental assessment.

3. In order for the Executive Order to be effectively implemented, it is essential that adequate resources be available. Upon request from USTR, with the concurrence of the Deputy Director for Management of the Office of Management and Budget, Federal agencies shall, to the extent permitted by law and subject to the availability of appropriations, provide analytical and financial resources and support, including the detail of appropriate personnel to USTR to carry out these Guidelines.

4. While environmental analyses of an agreement shall draw upon multiple agency perspectives, CEQ and agencies with environmental expertise shall play a prominent role in the conduct of environmental reviews. Environmental agencies shall bear principal responsibility for providing the expertise necessary to analyze impacts on environmental media and natural resources within their areas of specialization.

B. Implementation and Oversight

1. CEQ and USTR shall jointly exercise general oversight of the implementation of these Guidelines including their periodic review and update as necessary.

2. These Guidelines are intended only to improve the internal management of the executive branch and do not create any right, benefit, trust or responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or any person.

Appendix A: Public Participation Considerations

This appendix provides details on the format for particular elements of public participation described in the Guidelines. The time between key steps in the trade negotiation process will vary depending on the type and scope of the proposed agreement as well as the dynamics of the negotiation. For that reason, the precise number and timing of **Federal Register** notices and other mechanisms for public participation cannot be prescribed with specificity.

Federal Register notices shall also normally be posted on USTR's internet web site.

I. Minimum Requirements for Public Participation in Environmental Review Process

A. At a minimum, the public shall be involved at the following stages of the Environmental Review process:

1. Notice of Intent to Conduct Environmental Review (may be combined with other notices USTR issues early in the development of a trade agreement)

2. Notification of Intent to Initiate Environmental Review and Request for Comments on the Scope of Environmental Review

3. Notification of Availability of the Draft Environmental Review document and Request for Comments (in the normal case where a draft document is prepared)

4. Notification of Availability of the Final Environmental Review document

B. USTR shall also normally seek public views on environmental issues though periodic meetings with advisory committees and the interested public.

II. Guidance for Particular Public Notifications

A. Notice of Intent to Conduct Environmental Review

1. USTR shall notify the public of a decision to conduct an Environmental Review of the agreement. This notice may be combined with USTR notices requesting comment on broad issues early in the development of a trade agreement, which normally will request comment on environmental issues.

B. Notice of Intent to Initiate Environmental Review and Request for Comments on Scope

1. The notice and request shall normally provide information on the following subjects:

a. key US negotiating objectives,

b. the elements and topics expected to be under consideration for coverage by the proposed agreement,

c. the countries expected to participate in the agreement,

d. the sectors of the US economy likely to be affected (if known),

e. environmental issues already identified through the interagency process as potentially significant.

2. The notice may also explain how the public can obtain more information about the scoping process.

3. It may be possible to combine this notice with **Federal Register** notices issued for other purposes (*e.g.*, when USTR issues requests comment on broad issues associated with the trade agreement early in its development).

4. It may also be appropriate to request comments on the scope of the environmental review on multiple occasions as new information emerges and/or negotiating objectives shift.

C. Notice of Availability of Draft Environmental Review Document and Request for Comments

1. In the normal circumstance where a Draft Environmental Review document is prepared, the Draft ER shall be made available to the public through publication of a notice of availability in the **Federal Register**, and comments from the public will be requested.

D. Notice of Availability of Final Environmental Review Document

1. The Final Environmental Review document shall be made available to the public through publication of a notice of availability in the **Federal Register**.

E. Availability of Public Comments

1. Public comments on environmental issues relating to the particular trade agreement shall be available for public review in the USTR reading room.

F. Revision of Guidelines

1. USTR and CEQ through the TPSC may on occasion find it appropriate to revise and/or update these Guidelines. Public participation in the revision process shall include notification of the intent to revise and an opportunity for public comment on any significant revisions.

Appendix B: Types of Potential Environmental Impacts for Consideration

This appendix provides a list of types of impacts and may be useful for identifying the range of reasonably foreseeable environmental impacts for a proposed trade agreement. The list is illustrative and is intended to provide a general frame-of-reference for assisting in establishing the scope of the ER. The scope of any review must be determined on a case-by-case basis and all reasonably foreseeable environmental effects, both positive and negative, should be considered during scoping for the environmental review whether or not they are included on this list.

Scoping with respect to economic effects typically will result from an iterative exchange between those responsible for economic analysis and those with expertise in various areas of environmental concern. Similarly, with respect to the potential effects on environmental regulations of proposed trade disciplines, the scoping will typically involve an iterative exchange between those expert in the development and interpretation of trade texts and those expert in the development and interpretation of various fields of environmental regulation.

I. Regulatory Effects

A. Potential impacts of the proposed trade agreement on U.S. environmental regulations, statutes, other binding obligations such as multilateral environmental agreements.

B. Potential impacts of the proposed trade agreement on environmental policy instruments and other commitments.

II. Economic Effects (Compared to a Base or Projected Baseline)

A. Products, processes, environmentally sensitive sectors or regions that may be affected by the proposed trade agreement.

B. Changes in types or characteristics of goods and services and their distribution.

C. Changes in volume, pattern, and modes of transportation (*e.g.,* relating to invasive species or pollution impacts of transportation equipment and infrastructure).

D. Structural changes (*e.g.,* expansion or contraction of an environmentally sensitive sector in a certain country or region).

E. Technology effects involving changes in the process of production, including use of environmentally responsible technology.

F. Effect of the size of economies involved.

III. Environmental Effects (Related to Economic Effects Identified Above)

A. Changes in level, intensity, geographic distribution and temporal scope of variables used to measure the affected environment in comparison with base values (using either base year or baseline trend as appropriate).

B. Interaction of trade-related impacts with other impacts on the relevant media or resources.

C. Environmental effects resulting from any changes of standards that stem from economic effects.

IV. Environmental Media and Resources

A. Air quality and atmosphere (including climate, ozone).

B. Fresh water quality and resources (including both surface and ground), soil retention and quality.

C. Protected or environmentally sensitive terrestrial and marine areas, (*e.g.,* national parks, national wildlife refuges, wetlands, marine sanctuaries).

D. Endangered species and other species identified as significant under law (*e.g.,* marine mammals, migratory birds).

E. Marine, aquatic and terrestrial biodiversity, including species, genetic variety and ecosystems and the potential for invasive species to compromise such biodiversity; also ecosystem productivity and integrity, living resources and ecosystem services.

F. Environmental quality related to human health, including changes in environmental exposure to toxic substances (*e.g.,* increases or decreases in exposure to pesticide residues on food).

G. Transboundary and global impacts may include those on:

1. Places not subject to national jurisdiction or places subject to shared jurisdiction, such as Antarctica, atmosphere (including ozone and climate change features), outer space, and the high seas;

2. Migratory species, including straddling and highly migratory fish stocks and whale;

3. Impacts relating to other environmental problems identified by the international community as having a global dimension and warranting a global response;

4. Transboundary impacts involving the boundaries of the United States.

Appendix C: Structure and Content of Environmental Review Documents

This appendix provides details on the structure and content of the draft and final environmental review documents. In certain circumstances (e.g. confidentiality, compressed schedule) it may be necessary to adopt a modified documentation format, however, each ER document shall normally consist of the following sections:

(1) Summary
(2) Table of Contents
(3) Objectives of the Proposed Trade Agreement
(4) Scope of Environmental Impacts Reviewed
(5) Environmental Impacts & Response Options
(6) Findings and Conclusions
(7) List of Preparers
(8) Appendices

I. Guidance for Particular ER Document Sections

A. The *Objectives* section of the ER document should present an overview of the goals and negotiating history of the particular trade agreement under consideration. This section may highlight the perceived benefits of the agreement and related objectives for pursuing it.

B. The *Scope of Impacts* section should describe only those resources and/or regulations that were selected for review through the scoping process. This section should not be a compendium of all potentially impacted areas, but only those considered by the ERG to be sufficiently important to warrant analysis in the ER. This section of the ER document should also provide a brief presentation of the rationale employed during the issue prioritization process and the criteria used for establishing the scope of the ER and eliminating issues deemed irrelevant.

C. The *Environmental Impacts* section of the document should describe the expected impacts of those negotiating positions selected for review, which should be compared to a base or baseline scenario that estimates conditions that would exist in the absence of the proposed trade agreement. The described impacts should include both beneficial and adverse impacts. This section should summarize the analytical methodology used in determining the environmental impacts, including assumptions made and uncertainties in the data and methodology (a description of the methodology may best be provided in an appendix). The Environmental Impacts section of the ER document may also include a description of actions proposed for addressing negative impacts and/or for enhancing beneficial consequences of the proposed trade agreement.

D. The *Conclusions* section of the document should summarize the potential environmental impacts expected from the proposed trade agreement, and may present options for addressing those impacts. This section of the document may also include discussion of any post-agreement actions when responsible agencies determine that such actions are warranted or desirable.

E. The number and nature of *Appendices* for each Environmental Review document will vary according to the nature of the trade agreement under review. In general, the use of appendices is encouraged whenever inclusion of technical and/or supporting data would improve clarity and aid in the understanding of the review process. At a minimum, a summary of key issues identified by the public during the ER process should be included as an appendix of both the draft and final ER documents.

[FR Doc. 00–17418 Filed 7–10–00; 8:45 am]

BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Fairfax County, Virginia

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement in cooperation with the Virginia Department of Transportation (VDOT) for proposed improvements to the Capital Beltway (Interstate 495) in Fairfax County, Virginia for approximately 14 miles from Backlick Road (Route 617) to the American Legion Memorial Bridge at the Virginia/Maryland State line.

FOR FURTHER INFORMATION CONTACT: Edward Sundra, Environmental Specialist, Sr., Federal Highway Administration, Post Office Box 10249, Richmond, Virginia 23240–0249, Telephone 804–775–3338.

SUPPLEMENTARY INFORMATION: In 1997, a Major Investment Study (MIS) was completed in accordance with 23 CFR 450.318 which examined the transportation problems associated with the Capital Beltway in Virginia and identified possible solutions to address those problems as well as future transportation needs in the area. The MIS resulted in the determination that highway improvements which promote high occupancy vehicle (HOV) and bus transit use would be the most effective transportation investment to serve current and future demand on the Capital Beltway. The MIS also recommended that potential rail transit improvements serving the Capital Beltway corridor be studied on a regional basis by an appropriate transit agency or multi-jurisdictional team.

In 1998, FHWA and VDOT initiated the National Environmental Policy Act (NEPA) process for the proposed recommendations resulting from the MIS. Based on a preliminary assessment of the project area and potential environmental impacts, FHWA and VDOT cooperatively agreed to prepare an Environmental Assessment in accordance with 40 CFR 1501.3(b) and 23 CFR 771.119(a) which permits the preparation of an Environmental Assessment when the significance of the environmental impacts are not clearly established and the preparation of the Environmental Assessment would assist agency decision making regarding the

need for an Environmental Impact Statement.

To provide additional definition to the MIS recommendations, alternatives for interchange improvements, mainline configurations, and direct HOV access were developed and evaluated. Following an extensive and ongoing public involvement and outreach effort involving citizen workshops and information meetings, newsletters, a telephone hot-line, a website, and business/civic/neighborhood meetings, the alternatives were refined through an iterative screening process which determined the feasibility of implementing the various combinations of mainline configurations and interchange concepts. This screening process was based on engineering, operational, and environmental criteria. The most effective mainline and interchange combinations were combined into several ''end-to-end'' alternatives and carried forward for more detailed environmental analysis. Based on the initial results of this environmental analysis, it was determined that the proposed improvements to the Capital Beltway would result in greater environmental impacts than originally anticipated requiring the preparation of an Environmental Impact Statement.

Alternatives being considered for improving the Capital Beltway include various combinations of the following: Widening the existing roadway, implementing lane management strategies such as HOV lanes or express/local lanes, reconstructing existing interchanges, and providing new direct access points for HOV traffic. Other alternatives being considered include the Transportation System Management alternative and the No-Build alternative. Additional information on the scope of the proposed Capital Beltway improvements and the alternatives that will be evaluated in the Environmental Impact Statement is available on the Internet at *http://project1.parsons.com/capitalbeltway*.

This Environmental Impact Statement will replace the Environmental Assessment currently being prepared by FHWA and VDOT for the proposed Capital Beltway while building upon the scoping, engineering, and environmental work as well as the public involvement effort conducted to date. As part of the early coordination for the Environmental Assessment, letters describing the proposed action and soliciting input were sent to the appropriate Federal, State and local agencies, private organizations, citizens, and interest groups who have expressed or are known to have an interest in this proposal. Coordination with these agencies, organizations and individuals will continue as the Environmental Impact Statement is prepared. All Federal, State, and local agencies contacted during the early coordination for the Environmental Assessment will be notified of the FHWA's intent to prepare an Environmental Impact Statement for the proposed Capital Beltway improvements and provided an additional opportunity to comment on its proposed scope. Similar notice will be given to private organizations, citizens, and interest groups that have previously expressed or are known to have interest in this proposal. In addition, public input will continue to be solicited through the ongoing public involvement and outreach effort. Public hearings will be held when the draft Environmental Impact Statement is completed. Public notices will be given of the times and places of the hearings, and the draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings. Finally, preparation of this Environmental Impact Statement will be coordinated closely with the Maryland State Highway Administration's Capital Beltway Corridor Transportation Study, the Virginia Department of Rail and Public Transportation's Capital Beltway Corridor Rail Feasibility Study, and the Environmental Impact Statement currently being prepared for the Dulles Corridor Rapid Transit Project.

Although no formal scoping meeting is planned at this time, comments are invited from all interested parties to ensure that the full range of issues related to this proposed action are identified and taken into account. Comments or questions concerning the proposed action and draft Environmental Impact Statement should be directed to FHWA at the address provided above.

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

Authority: 23 U.S.C. § 315; 49 CFR 1.48.

Issued on June 30, 2000.

Edward S. Sundra,

Environmental Specialist, Sr.

[FR Doc. 00–17485 Filed 7–10–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this 30-day notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on May 18, 2000 (65 FR 31624).

DATES: Comments must be submitted on or before August 11, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 C.F.R. 1320.5, 1320.8(d)(1), 1320.12. On February 9, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 6438. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60

days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Hours of Service Regulations.

OMB Control Number: 2130–0005.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.3.

Abstract: The collection of information is due to the railroad hours of service regulations set forth in 49 CFR Part 228 which require railroads to collect hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (Subpart C of 49 CFR Part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of Sections 228.101, 228.103, and 228.105.

Annual Estimated Burden Hours: 4,067,432.

Title: Railroad Operating Rules.

OMB Control Number: 2130–0035.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: The collection of information is due to the railroad operating rules set forth in 49 CFR Part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their system headquarters. Also, 49 CFR 220.21(b) prescribes the collection of information which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be made available to FRA upon request.

Annual Estimated Burden Hours: 131,192.

Title: State Safety Participation Regulations and Remedial Actions.

OMB Control Number: 2130–0509.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.10/29/29A/33 /61/67/68/68A/69/96/96A/96B

Abstract: The collection of information is set forth under 49 CFR Part 212, and requires qualified state inspectors to provide various reports concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations to FRA for monitoring and enforcement purposes. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

Annual Estimated Burden Hours: 9,467.

Title: Rear-End Marking Devices.

OMB Control Number: 2130–0523.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: The collection of information is set forth under 49 CFR Part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current ''Guidelines for Testing of FRA Rear End Marking Devices.'' Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

Annual Estimated Burden Hours: 8.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.3.

Abstract: The collection of information is set forth under 49 CFR Part 223 which requires the certification and permanent marking of glazing materials by the manufacturer along with the responsibility of the manufacturer to make available test verification data to railroads and FRA upon request.

Annual Estimated Burden Hours: 1,010.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, D.C., 20503. Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. §§ 3501–3520.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–17497 Filed 7–10–00; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The attached document, 24th Annual Report to Congress on the Automotive Fuel Economy Program, was prepared pursuant to 49 U.S.C. 32916 *et seq.* which requires that ''the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of the average fuel economy standards under this part.''

The 24th Annual Report to Congress on the Automotive Fuel Economy Program summarizes the fuel economy performance of the vehicle fleet and the activities of the National Highway Traffic Safety Administration (NHTSA) during 1999. Included in this report is a section summarizing rulemaking activities during 1999. This report is available on the Internet at: *http://www.nhtsa.dot.gov/cars/problems/studies/fuelecon/index.html.* To obtain paper copies of this document, you may

contact NHTSA's Publications Ordering and Distribution Services on (202) 366–1566.

Issued on: June 28, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

Automotive Fuel Economy Program; Twenty-Fourth Annual Report to Congress, Calendar Year 1999

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Section III: 1999 Activities
A. Light Truck CAFE Standards
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Section I: Introduction

The Twenty-fourth Annual Report to Congress on the Automotive Fuel Economy Program summarizes the fuel economy performance of the vehicle fleet and the activities of the National Highway Traffic Safety Administration (NHTSA) during 1999, in accordance with 49 U.S.C. 32916 *et seq.*, which requires the submission of a report each year. Included in this report is a section summarizing rulemaking activities during 1999.

The Secretary of Transportation is required to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States market. The authority to administer the program was delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing reports to Congress annually on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers, and other matters.

Passenger car fuel economy standards were established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 miles per gallon (mpg). NHTSA is authorized to amend the standard above or below that level. The agency has established light truck standards each year, but Congress has mandated through the DOT Appropriations Acts for fiscal years 1996 through 2000, no increase from the MY 1996 value of 20.7 mpg for MYs 1998 through 2002. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 2001

[In mpg]

Model year	Passenger cars	Light Trucks (1)		
		Two-wheel drive	Four-wheel drive	Combined (2) (3)
1978	(4)18.0			
1979	(4)19.0	17.2	15.8	
1980	(4) 20.0	16.0	14.0	(5)
1981	22.0	(6)16.7	15.0	(5)
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	(4) 27.5	(7)19.7	(7)18.9	(7)19.5
1986	(8) 26.0	20.5	19.5	20.0
1987	(9) 26.0	21.0	19.5	20.5
1988	(9) 26.0	21.0	19.5	20.5
1989	(10) 26.5	21.5	19.0	20.5
1990	(4) 27.5	20.5	19.0	20.0
1991	(4) 27.5	20.7	19.1	20.2
1992	(4) 27.5			20.2
1993	(4) 27.5			20.4
1994	(4) 27.5			20.5
1995	(4) 27.5			20.6
1996	(4) 27.5			20.7
1997	(4) 27.5			20.7
1998	(4) 27.5			20.7
1999	(4) 27.5			20.7
2000	(4) 27.5			20.7
2001	(4) 27.5			20.7

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 pounds or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the standard of 17.2 mpg.

[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Motor Vehicle Information and Cost Savings Act.

[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.
[6] Revised in June 1979 from 18.0 mpg.
[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.
[8] Revised in October 1985 from 27.5 mpg.
[9] Revised in October 1986 from 27.5 mpg.
[10] Revised in September 1988 from 27.5 mpg.

Section II: Vehicle Fuel Economy Performance and Characteristics

A. Fuel Economy Performance by Manufacturer

The fuel economy achievements for domestic and foreign-based manufacturers in MY 1999 were updated to include final EPA calculations, where available, since the publication of the *Twenty-third Annual Report to the Congress*. These fuel economy achievements and current projected data for MY 1999 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 28.3 mpg in MY 1999, a decrease of 0.4 mpg from the MY 1998 level. For MY 1999, CAFE values increased above MY 1998 levels for six of 17 passenger car manufacturers' fleets. (See Table II–1.) These six companies accounted for more than 12 percent of the total MY 1999 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, and some larger, less fuel-efficient models. For MY 1999, the overall domestic manufacturers' fleet average fuel economy was 28.2 mpg. For MY 1999, Honda and Toyota domestic passenger car CAFE values rose 4.9 mpg and 4.7 mpg from their 1998 levels, while Ford/Mazda and General Motors fell 0.4 mpg and 0.2 mpg, respectively, from their MY 1998 levels. Nissan remained at its MY 1998 level of 29.9 mpg. Overall, the domestic manufacturers' combined CAFE increased 0.1 mpg above the MY 1998 level.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER* MODEL YEARS 1998 AND 1999

Manufacturer	Model year CAFE (mpg)	
	1998	1999
Domestic:		
Chrysler	28.7	.....
DaimlerChrysler	.....	27.5
Ford/Mazda	27.6	27.2
General Motors	27.8	27.6
Honda	29.5	34.4
Mitsubishi	.....	28.8

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER* MODEL YEARS 1998 AND 1999—Continued

Manufacturer	Model year CAFE (mpg)	
	1998	1999
Nissan	29.9	29.9
Toyota	28.6	33.3
Sales weighted average (domestic)	28.1	28.2
Import:		
BMW	25.4	25.4
Chrysler	25.8	.....
DaimlerChrysler	.....	26.3
Fiat	13.5	13.6
Ford/Mazda	28.9	30.1
General Motors	28.9	27.9
Honda	34.6	29.4
Hyundai	31.5	31.4
Kia	30.9	31.2
Mercedes-Benz	27.2	.....
Mitsubishi	29.7	29.6
Nissan	30.7	29.5
Porsche	24.5	24.2
Subaru	27.6	27.5
Suzuki	35.9	35.4
Toyota	30.7	28.0
Volvo	25.6	26.2
Volkswagen	28.7	28.2
Sales weighted average (import)	30.0	28.4
Total fleet average	28.7	28.3
Fuel economy standards	27.5	27.5

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER MODEL YEARS 1998 AND 1999

Manufacturer	Model year CAFE (mpg) combined	
	1998	1999
Chrysler	20.5	.....
DaimlerChrysler	.....	20.7
Ford/Mazda	20.1	20.4
General Motors	21.1	20.0
Honda	27.1	24.2
Isuzu	21.4	21.5
Kia	24.4	24.2
Land Rover	17.2	17.0
Mercedes-Benz	21.3	.....
Mitsubishi	22.5	22.3
Nissan	22.2	21.1
Suzuki	27.4	24.3
Toyota	23.5	22.6
Volkswagen	.....	19.1
Total fleet average	20.9	20.7

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER MODEL YEARS 1998 AND 1999—Continued

Manufacturer	Model year CAFE (mpg) combined	
	1998	1999
Fuel economy standards	20.7	20.7

In MY 1999, the fleet average fuel economy for import passenger cars decreased by 1.6 mpg from the MY 1998 CAFE level to 28.4 mpg. Five of the 16 import car manufacturers increased their CAFE values between MYs 1998 and 1999. Figure II–1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1999.

The total light truck fleet CAFE decreased 0.2 mpg below the MY 1998 CAFE level of 20.9 mpg (see Table II–2). Figure II–2 illustrates the trends in total light truck fleet CAFE from MY 1979 to MY 1999.

Six passenger cars (BMW, DaimlerChrysler import, Fiat, Ford/Mazda domestic, Porsche and Volvo) and four light truck manufacturers (Ford/Mazda, General Motors, Land Rover and Volkswagen) are projected to fail to achieve the levels of the MY 1999 CAFE standards. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for non-compliance. Some MY 1999 CAFE values may change when final figures are provided to NHTSA by EPA in mid-2000. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

Mitsubishi achieved 75 percent domestic content for its United States built passenger cars to become the fourth foreign-based manufacturer with a domestic fleet. These domestic-built vehicles do not appreciably affect the domestic fleet CAFE.

BILLING CODE 4910–59–P

Figure II-1

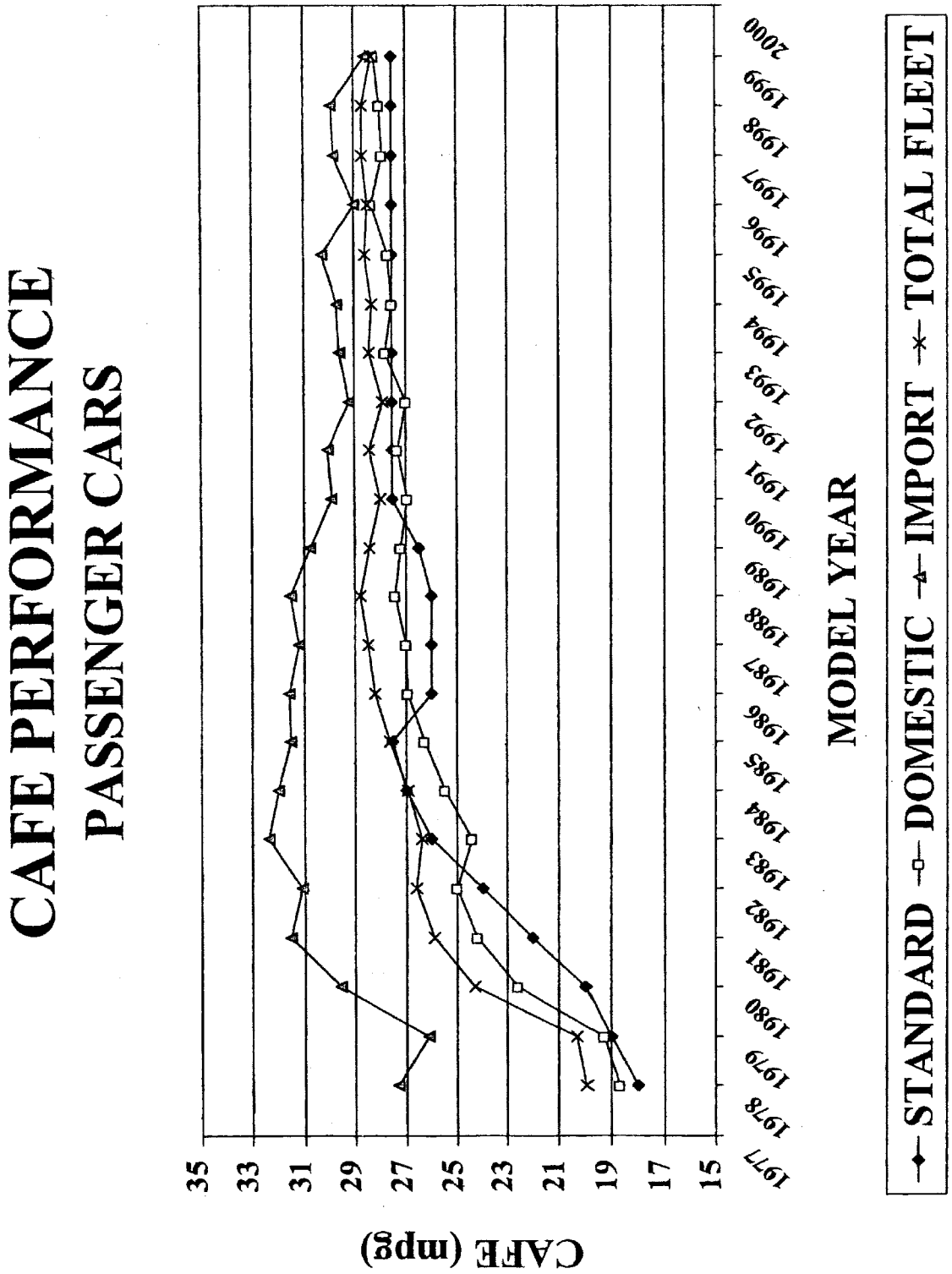
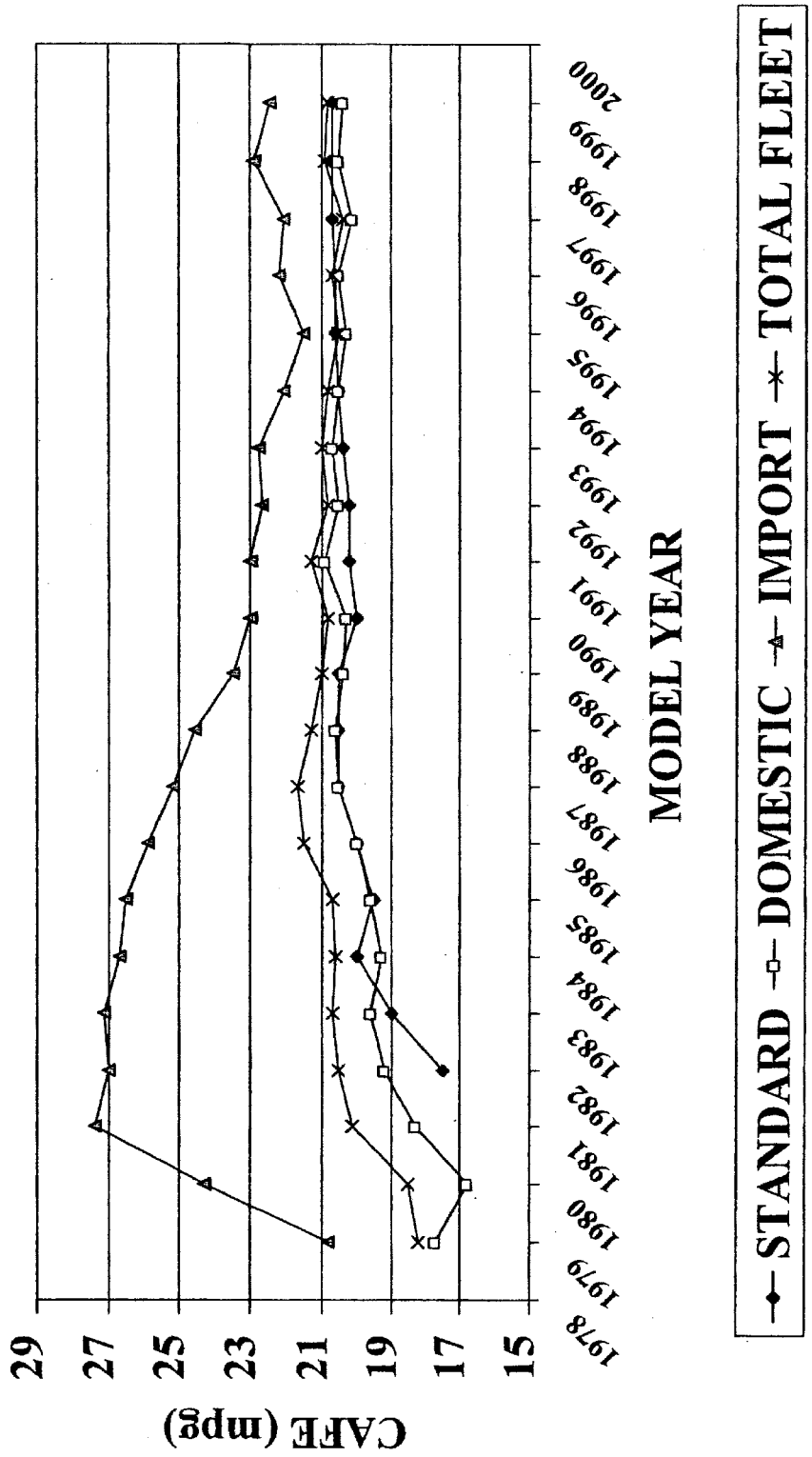

CAFE PERFORMANCE
PASSENGER CARS
CAFE (mpg)
35
33
31
29
27
25
23
21
19
17
15
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
MODEL YEAR
STANDARD
DOMESTIC
IMPORT
TOTAL FLEET

Figure II-2

CAFE PERFORMANCE
LIGHT TRUCKS



In November 1998, a domestic manufacturer, Chrysler Corporation, merged with an import manufacturer, Daimler-Benz AG, to form a new company, DaimlerChrysler, making it the fifth-largest automaker in the world.

B. Characteristics of the MY 1999 Passenger Car Fleet

The characteristics of the MY 1999 passenger car fleet reflect a continuing trend toward satisfying consumer demand for higher performance cars. (See Table II–3.) From MY 1998 to MY 1999, horsepower/100 pounds, a measure of vehicle performance, increased from 5.11 to 5.30 for domestic passenger cars and from 4.93 to 5.03 for import passenger cars. The total fleet average for passenger cars increased from 5.05 horsepower/100 pounds in MY 1998 to 5.21 in MY 1999, the highest level in the 43 years for which the agency has data. Compared with MY 1998, the average curb weight for MY 1999 increased by five pounds for the domestic fleet and increased by 108 pounds for the import fleet. The average curb weight for the total fleet of passenger cars increased from 3,075 pounds in MY 1998 to 3,116 pounds in MY 1999, primarily because of the average curb weight increase for the import fleet. Average engine displacement increased from 174 to 176 cubic inches for domestic passenger cars and increased from 137 to 146 cubic inches for import passenger cars from MY 1998 to MY 1999.

The 0.1 mpg fuel economy improvement for the MY 1999 domestic passenger car fleet may be attributed in part to mix shifts (in the segmentation by EPA size class), improved engine technology and the use of more automatic four-speed transmissions and automatic transmissions with lockup clutches.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1998 AND 1999

Characteristics	Total fleet		Domestic fleet		Import fleet	
	1998	1999	1998	1999	1998	1999
Fleet Average Fuel Economy, mpg	28.7	28.3	28.1	28.2	30.0	28.4
Fleet Average Curb Weight, lbs	3075	3116	3119	3124	2992	3100
Fleet Average Equivalent Test Weight, lbs	3372	3418	3421	3432	3278	3392
Fleet Average Engine Displacement, cu. in	161	166	174	176	137	146
Fleet Average Horsepower/Weight ratio, HP/100 lbs	5.05	5.21	5.11	5.30	4.93	5.03
% of Fleet	100	100	65.7	66.2	34.3	33.8
Segmentation by EPA Size Class, %						
Two-Seater	0.7	1.4	0.2	0.6	1.7	2.8
Minicompact	0.4	0.6	0.0	0.3	1.2	1.2
Subcompact*	16.7	15.6	10.4	14.7	28.7	17.4
Compact*	35.8	31.7	35.8	35.1	35.8	25.1
Mid-Size*	34.1	38.2	35.4	30.8	31.6	52.9
Large*	12.3	12.5	18.2	18.6	1.0	0.6
Diesel Engines	0.19	0.16	0.0	0.0	0.6	0.5
Turbo or Supercharged Engines	2.0	4.4	1.2	3.9	3.6	5.4
Fuel Injection	100	100	100	100	100	100
Front-Wheel Drive	87.0	86.0	90.9	90.9	79.5	76.4
Automatic Transmissions	86.4	86.0	90.4	90.8	78.9	76.6
Automatic Transmissions with Lockup Clutches	99.2	99.8	99.0	99.8	99.8	99.8
Automatic Transmissions with Four or more Forward Speeds	92.0	95.1	90.8	94.0	94.8	98.1
% Electric	0.0	0.002	0.0	0.003	0.0	0.0

*Includes associated station wagons.

The size/class breakdown shows an increased trend primarily toward two-seater, minicompact, mid-size passenger and large cars with the reduction of subcompact and compact passenger cars for the overall fleet. The size/class mix in the domestic fleet showed a decrease in compact and mid-size passenger cars and an increase in two-seater, minicompact, subcompact and large passenger cars. The size/class mix in the import fleet showed a decrease in subcompact, compact and large passenger cars and an increase in two-seater and mid-size passenger cars. The import share of the passenger car market declined in MY 1999, as more foreign-based manufacturers achieved 75 percent domestic content for their U.S. and Canadian-assembled passenger cars.

The domestic fleet rose above its MY 1998 level in the share of turbocharged and supercharged engines. Diesel engines were only offered on certain Mercedes and Volkswagen models during MY 1999. Consequently, diesel engine shares decreased in MY 1999.

Passenger car fleet average characteristics have changed significantly since MY 1978 (the first year of fuel economy standards). (See Table II–4.) After substantial initial weight loss (from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds), the curb weight stabilized between 2,800 and 3,120 pounds. Table II–4 shows that the MY 1999 passenger car fleet has nearly equal interior volume and higher performance, but with more than 42 percent better fuel economy, than the MY 1978 fleet. (See Figure II–3.)

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1999

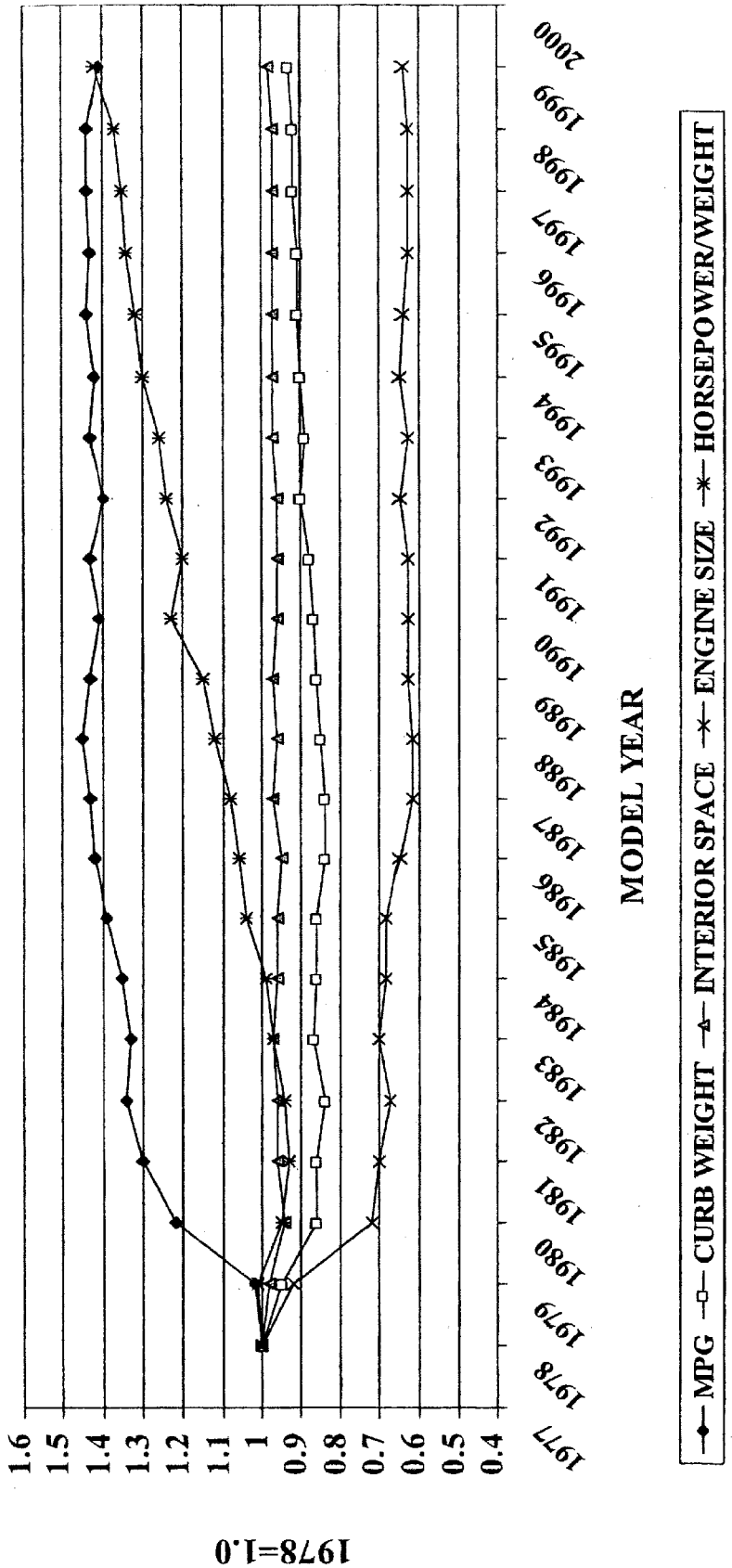
Model year	Fuel economy (mpg)	Curb weight (lbs.)	Equivalent test weight (lbs.)	Interior space (cu. ft.)	Engine size (cu. in.)	Horsepower/ weight (hp/100 lb.)
1978	19.9	3349	3627	112	260	3.68
1979	20.3	3180	3481	110	238	3.72
1980	24.3	2867	3162	105	187	3.51
1981	25.9	2883	3154	108	182	3.43

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1999—Continued

Model year	Fuel economy (mpg)	Curb weight (lbs.)	Equivalent test weight (lbs.)	Interior space (cu. ft.)	Engine size (cu. in.)	Horsepower/ weight (hp/100 lb.)
1982	26.6	2808	3098	107	173	3.47
1983	26.4	2908	3204	109	182	3.57
1984	26.9	2878	3170	108	178	3.66
1985	27.6	2867	3177	108	177	3.84
1986	28.2	2821	3127	106	169	3.89
1987	28.5	2805	3100	109	162	3.98
1988	28.8	2831	3100	107	161	4.11
1989	28.4	2879	3181	109	163	4.24
1990	28.0	2908	3192	108	163	4.53
1991	28.4	2934	3228	108	164	4.42
1992	27.9	3007	3307	108	169	4.56
1993	28.4	2971	3328	109	164	4.62
1994	28.3	3011	3317	109	169	4.79
1995	28.6	3047	3335	109	166	4.87
1996	28.5	3047	3352	109	164	4.92
1997	28.7	3071	3364	109	164	4.95
1998	28.7	3075	3372	109	161	5.05
1999	28.3	3116	3418	110	166	5.21

Figure II-3

PASSENGER CAR FLEET AVERAGE CHARACTERISTICS



C. Characteristics of the MY 1999 Light Truck Fleet

The characteristics of the MY 1999 light truck fleet are shown in Table II–5. Light truck manufacturers are not required to divide their fleets into domestic and import fleets based on the 75-percent domestic content threshold used for passenger car fleets. The light truck fleet is subdivided into two-wheel drive or four-wheel drive classifications.

The MY 1999 average test weight of the total light truck fleet increased by 95 pounds over that for MY 1998. The average fuel economy of the fleet decreased by 0.2 mpg to 20.7 mpg. Diesel engine usage increased slightly in light trucks to 0.05 percent in MY 1999 from 0.02 percent in MY 1998. The share of the MY 1999 two-wheel drive fleet decreased by 1.9 percent from the MY 1998 level of 57.4 percent.

CAFE levels for light trucks in the 0–8,500 pounds gross vehicle weight (GVW) class increased from 18.5 mpg in MY 1980 to 21.7 mpg in MY 1987, before declining to 20.7 mpg in MY 1999, influenced by an increase in performance. Light truck production increased from 1.9 million units in MY 1980 to 6.4 million units in MY 1999. Light trucks comprised 43 percent of the total light duty vehicle fleet production in MY 1999, nearly 2.5 times more than the share in MY 1980.

D. Passenger Car and Light Truck Fleet Economy Averages

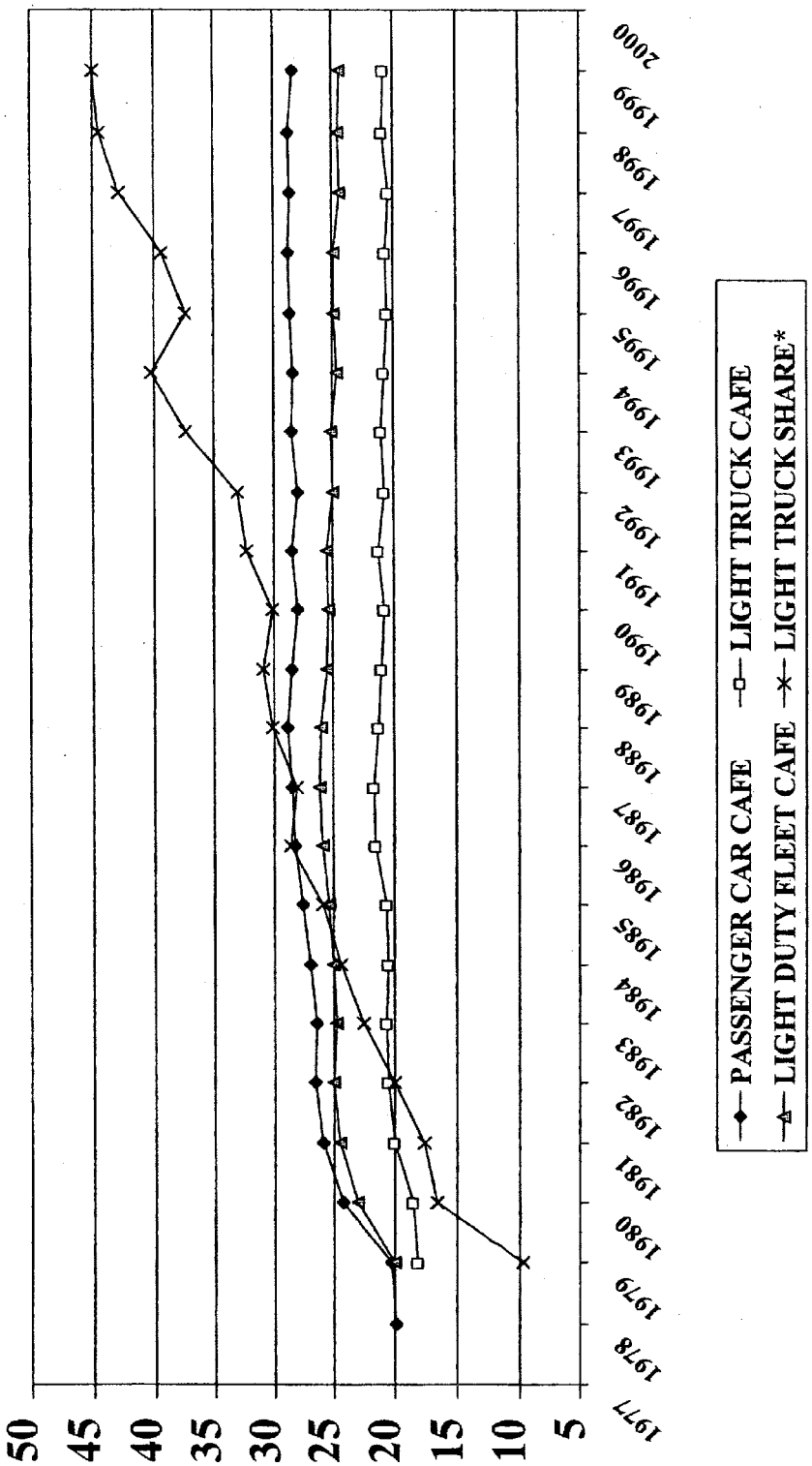
Figure II–4 illustrates an increase in the light duty fleet (combined passenger cars and light trucks) average fuel economy through MY 1987, followed by a gradual decline. (Also, see Table II–6.) Passenger car average fuel economy remained relatively constant for MYs 1987–1999. The overall decline in fuel economy illustrates a larger decrease in car fuel economy compared to light truck fuel economy.

TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYS 1998 AND 1999

Characteristics	Total fleet		Two-wheel drive		Four-wheel drive	
	1998	1999	1998	1999	1998	1999
Fleet Average Fuel Economy, mpg	20.9	20.7	22.4	22.2	19.1	19.1
Fleet Average Equivalent Test Weight, lbs	4435	4530	4255	4356	4679	4747
Fleet Average Engine Displacement, cu. in	243	251	228	239	263	267
Fleet Average Horsepower/Weight ratio, HP/100 lbs	4.23	4.24	4.20	4.29	4.26	4.17
% of Fleet	100	100	57.4	55.5	42.6	44.5
% of Fleet from Foreign-based Manufacturers	15.5	15.6	11.4	11.8	21.1	20.2
Segmentation by Type, %						
Passenger Van	18.5	17.1	31.4	29.9	1.3	1.2
Cargo Van	3.3	3.5	5.6	6.2	0.2	0.2
Small Pickup	7.3	3.2	12.8	5.8	0.0	0.0
Large Pickup:						
Two-Wheel Drive	17.1	17.9	29.7	32.3	0.0	0.0
Four-Wheel Drive	13.3	13.7	0.0	0.0	31.3	30.9
Special Purpose:						
Two-Wheel Drive	11.8	14.3	20.6	25.8	0.0	0.0
Four-Wheel Drive	28.7	30.2	0.0	0.0	67.3	67.8
Diesel Engines	0.02	0.05	0.01	0.08	0.04	0.03
Turbo/Supercharged Engines	0.25	0.52	0.01	0.08	0.56	1.1
Fuel Injection	100	100	100	100	100	100
Automatic Transmissions	86.1	89.8	85.0	88.6	87.6	91.3
Automatic Transmissions with Lockup Clutches	99.3	99.6	99.1	99.3	100	100
Automatic Transmissions with Four or More Forward Speeds	95.1	98.1	92.2	97.5	94.6	98.9
% Electric	0.01	0.01	0.02	0.02	0.00	0.00

Figure II-4

CAFE PERFORMANCE TOTAL FLEET



*The Light Truck Share represents the percentage of the total light duty fleet.

Table II-6

DOMESTIC AND IMPORT PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978-1999 (in MPG)

Model Year	Domestic			Import			All Cars	All Light Trucks	Total Fleet	Light Truck Share of Fleet (%)
	Car	Light Truck	Combined	Car	Light Truck*	Combined				
1978	18.7	...	...	27.3	...	...	19.9	...	...	...
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.3	18.2	20.1	9.8
1980	22.6	16.8	21.4	29.6	24.3	28.6	24.3	18.5	23.1	16.7
1981	24.2	18.3	22.9	31.5	27.4	30.7	25.9	20.1	24.6	17.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	26.6	20.5	25.1	20.1
1983	24.4	19.6	23.0	32.4	27.1	31.5	26.4	20.7	24.8	22.5
1984	25.5	19.3	23.6	32.0	26.7	30.6	26.9	20.6	25.0	24.4
1985	26.3	19.6	24.0	31.5	26.5	30.3	27.6	20.7	25.4	25.9
1986	26.9	20.0	24.4	31.6	25.9	29.8	28.2	21.5	25.9	28.6
1987	27.0	20.5	24.6	31.2	25.2	29.6	28.5	21.7	26.2	28.1
1988	27.4	20.6	24.5	31.5	24.6	30.0	28.8	21.3	26.0	30.1
1989	27.2	20.4	24.2	30.8	23.5	29.2	28.4	21.0	25.6	30.8
1990	26.9	20.3	23.9	29.9	23.0	28.5	28.0	20.8	25.4	30.1
1991	27.3	20.9	24.4	30.1	23.0	28.4	28.4	21.3	25.6	32.2
1992	27.0	20.5	23.8	29.2	22.7	27.9	27.9	20.8	25.1	32.9
1993	27.8	20.7	24.2	29.6	22.8	28.1	28.4	21.0	25.2	37.4
1994	27.5	20.5	23.5	29.7	22.0	27.8	28.3	20.8	24.7	40.2
1995	27.7	20.3	23.8	30.3	21.5	27.9	28.6	20.5	24.9	37.4
1996	28.1	20.5	24.1	29.6	22.2	27.7	28.5	20.8	24.9	39.4
1997	27.8	20.2	23.3	30.1	22.1	27.5	28.7	20.6	24.6	41.6
1998	28.1	20.5	23.3	30.0	22.9	27.6	28.7	20.9	24.6	44.5
1999	28.2	20.4	23.7	28.4	22.5	26.9	28.3	20.7	24.5	43.5

*Light trucks from foreign-based manufacturers.

NOTE: Beginning with MY 1999, the agency ceased categorizing the total light truck fleet by either domestic or import fleets.

While passenger car and light truck fleet fuel economy decreased from MY 1998 to MY 1999 by 0.4 mpg and 0.2 mpg respectively, the total fleet fuel economy for MY 1999 decreased to 24.5 mpg from 24.6 mpg. The shift to light

trucks for general transportation has had a significant effect on fuel consumption.

E. Domestic and Import Fleet Fuel Economy Averages

Domestic and import passenger car fleet average fuel economies have improved since MY 1978, although the increase is far more dramatic for the domestic fleet. In MY 1999, the domestic passenger car fleet average fuel economy was 28.2 mpg. The import passenger car fleet average fuel economy was 28.4 mpg. Compared with MY 1978, this reflects an increase of 9.5 mpg for domestic cars and 1.1 mpg for import cars.

Since MY 1980, the average fuel economy for the total light truck fleet and the domestic light truck manufacturers has shown overall improvement, however, both have remained below the fuel economy level for the imported light truck fleet. The import light truck average fuel economy has decreased significantly since its highest level of 27.4 mpg for MY 1981 to 22.2 mpg for MY 1996, the last year the agency divided the light truck fleet into domestic and import.

The disparity between the average CAFEs of the import and domestic manufacturers has declined in recent years as domestic manufacturers have maintained relatively stable CAFE values while the import manufacturers moved to larger vehicles, and more four-wheel drive light trucks, thus lowering their CAFE values.

Section III: 1999 Activities

A. Light Truck CAFE Standards

On April 7, 1999, NHTSA published a final rule establishing a combined standard of 20.7 mpg for light trucks for MY 2001. The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1999, Pub. L. 105–66, precluded the agency from setting the MY 2001 standard at a level other than the level for MY 2000.

B. Enforcement

49 U.S.C. 32912(b) imposes a civil penalty of $5.50 for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

Table III–1 shows CAFE fines paid by manufacturers in calendar year 1999. In calendar year 1999, manufacturers paid civil penalties totaling $16,275,722 for failing to comply with the fuel economy standards of 27.5 mpg for passenger cars and 20.7 mpg for light trucks in MYs 1997 and 1998.

TABLE III–1.—CAFE FINES COLLECTED DURING CALENDAR YEAR 1999

Model year	Manufacturer	Amount fined	Date paid
1997	Land Rover	$68	01/99
	Volkswagen	176,220	04/99
	Lotus	36,890	05/99
1998	Fiat	527,450	04/99
	Mercedes-Benz	1,683,525	07/99
	BMW of North America	13,851,569	12/99

[FR Doc. 00–16922 Filed 7–5–00; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6857, Notice 2]

Intac Automotive Products, Inc.; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Intac Automotive Products, Inc., (Intac) has determined that certain brake fluid containers manufactured by its supplier, Gold Eagle, are not in compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 116, ''Motor Vehicle Brake Fluids'', and has filed appropriate reports pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Intac has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on February 18, 2000, in the **Federal Register** (65 FR 8472). NHTSA received no comments on this application.

Paragraph S5.2.2.2 of FMVSS No. 116 requires that certain information, including a serial number identifying the packaged lot and date of packaging specified in S5.2.2.2(d), be clearly marked on each brake fluid container or label permanently affixed to the container. Paragraph S5.2.2.2 further requires that this information be legible after being subjected to the test procedures in S6.14, *Container information.* S6.14 requires that each container be immersed in the same brake fluid contained therein for 15 minutes and dried within 5 minutes of its removal from the brake fluid.

Intac filed a Part 573 report informing the agency that, on November 4, 1997, it manufactured approximately 9,000 containers of brake fluid which it shipped to Petrochemical, Inc., for Mazda. On April 6, 1999, Intac manufactured approximately 30,500 containers of brake fluid which it shipped to Nissan and, on August 12, 1999, it manufactured approximately 16,800 containers of brake fluid which it shipped to Petrochemical, Inc., for Subaru. According to Intac, some of these brake fluid containers have labels that do not comply with the requirements of S5.2.2.2 of FMVSS No. 116. Additionally, to the best of Intac's knowledge, all of that company's brake fluid containers with labels that are potentially noncompliant with these requirements were manufactured on the aforementioned dates. For some of these containers, the packaged lot and date code information on the label (S5.2.2.2(d)) were not legible after the container was subjected to the test procedures in S6.14. The containers and labels were manufactured by the Gold Eagle Company, which also packaged the brake fluid in the containers under contract to Intac. Intac believes this noncompliance to be inconsequential to motor vehicle safety.

Intac supported its application for inconsequential noncompliance by stating that all the substantive safety warnings concerning proper storage and use of the contents of the referenced brake fluid containers were legible after durability testing in accordance with

S6.14. Intac also stated that the purpose of the serial number identifying the packaged lot and date of packaging is to facilitate determination of the extent of defective brake fluid should such be discovered. According to Intac, there is no serious risk to motor vehicle safety if the packaged lot and date information is lost. If packaged lot and date information were not visible on container labels, and defective brake fluid was suspected, the manufacturer would have to recall a larger number of containers than the number of the containers that would be recalled if this information was available. Intac informed the agency that the company has not manufactured brake fluid that has been determined to be in noncompliance with the brake fluid performance requirements in FMVSS No. 116, nor has the company manufactured brake fluid that has been recalled because of a safety defect.

Intac also stated that the containers of brake fluid in question were sold to Nissan and Petrochemical, Inc. The containers sold to Petrochemical were distributed to Mazda and Subaru. The product sold to Nissan and Petrochemical was distributed to dealerships and authorized repair facilities and it is unlikely that private consumers obtained these products through retail outlets for personal use.

According to Intac, the dealerships and authorized repair facilities that received the brake fluid tend to consume the product quickly once the containers are opened. Therefore, there was little likelihood that the lot and date information on the container label would become illegible through contact with brake fluid before the contents of a container was used.

Intac further stated that it was able to secure most of the noncompliant inventory after contacting Nissan and Petrochemical, Inc., so that most of the noncompliant brake fluid containers would be returned to Intac for correction.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the safety related information provided on the brake fluid container label. According to Intac, all substantive information regarding the safe use of the contents of the brake fluid containers was legible on the labels after testing in accordance with S6.14, and the brake fluid packaged in these containers complies with all relevant FMVSS No. 116 performance requirements. The primary purpose of the packaged lot and date code is to identify brake fluid that may not comply with the performance requirements of FMVSS No. 116 so as to facilitate a recall campaign. Intac has agreed that a campaign to recall noncompliant brake fluid would include all containers with illegible packaged lot and date codes in addition to the containers with relevant legible packaged lot and date code information. Accordingly, a container label with illegible packaged lot and date information would not have a consequential effect on motor vehicle safety. Additionally, Intac stated that it has not produced brake fluid that does not meet the performance requirements in FMVSS No. 116, nor has any of its brake fluid been recalled because of a safety defect. Intac further stated that most of the containers manufactured with potentially noncompliant warning labels were retrieved from Petrochemical, Inc. and Nissan prior to use.

Intac has reviewed the brake fluid container manufacturing process, determined the cause of this noncompliance, and modified the process to eliminate this noncompliance in the future.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 5, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–17416 Filed 7–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Part 275

1. *Purpose.* This order delegates certain of the authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms. Specifically, this order specifies the appropriate ATF officers that are designated in Treasury Decision ATF–422, which revised sections of Part 275 of Title 27 of the Code of Federal Regulations (CFR).

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to tobacco products and cigarette papers and tubes. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in certain sections of Part 275 of Title 27 CFR to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom applications, notices, and reports required by certain sections of Part 275 of Title 27 CFR, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates and the positions involved in this delegation order has been attached.

Bradley A. Buckles,

Director.

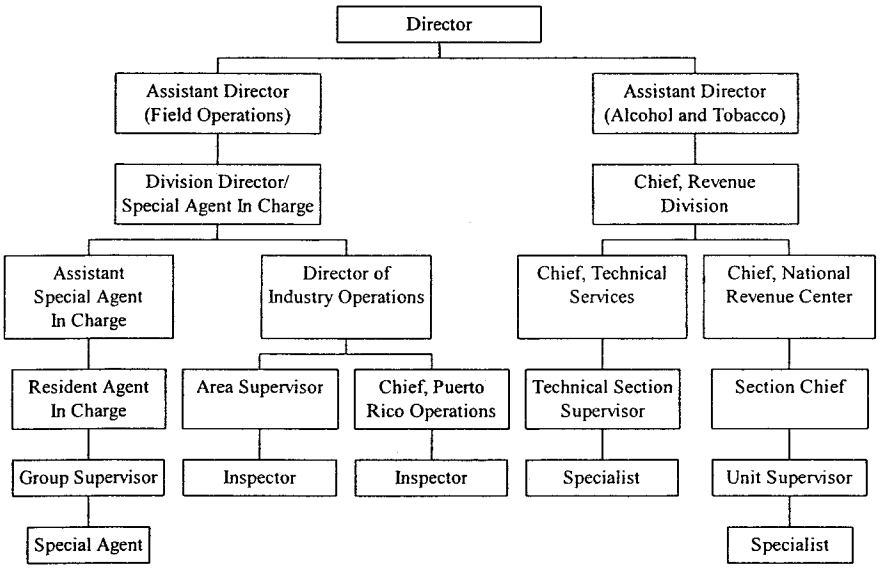
TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS

Regulatory section	Officer(s) authorized to act or receive document
§ 275.25	Inspector or Specialist.
§ 275.85	Section Chief, National Revenue Center (NRC).
§ 275.86	Unit Supervisor, NRC, to whom ATF F 2145(5200.11) is sent, and Specialist to certify ATF F 2145(5200.11).
§ 275.106	Unit Supervisor, NRC, to whom copy of ATF F 3075(5200.9) is sent.

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS—Continued

Regulatory section	Officer(s) authorized to act or receive document
§ 275.111	Unit Supervisor, NRC, to whom copy of ATF F 2987(5120.32) is sent.
§ 275.115a(e)	Unit Supervisor, NRC.
§ 275.193	Unit Supervisor, NRC.
§ 275.194	Unit Supervisor, NRC.
§ 275.196	Unit Supervisor, NRC.
§ 275.197	Unit Supervisor, NRC, or Area Supervisor.
§ 275.198	Inspector, Specialist, or Special Agent.
§ 275.199	Director, Industry Operations.
§ 275.200	Unit Supervisor to approve (by affixing the signature of the Director) permits upon the recommendation of the Area Supervisor.
§ 275.203	Inspector, Specialist, or Special Agent.
§ 275.207	Unit Supervisor upon the recommendation of the Area Supervisor.
§ 275.208	Director of Industry Operations.
§ 275.223	Unit Supervisor, NRC.
§ 275.224	Unit Supervisor, NRC.
§ 275.225	Unit Supervisor, NRC.

ATF Organization



This is not a complete organizational chart of ATF.

CERTIFIED TO BE A TRUE COPY OF THE ORIGINAL

[FR Doc. 00–17498 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Customs Service

Fee for Electronic Fingerprinting

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces the fee for fingerprinting at airports at which there is a computerized fingerprint identification system for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. The fee will be $39.00.

EFFECTIVE DATES: July 11, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Slattery, U. S. Customs Service, Office of Field Operations, Passenger Programs, Room 5.4D, 1300 Pennsylvania Avenue, NW, Washington, DC, 20029, Tel. (202) 927–4434.

SUPPLEMENTARY INFORMATION:

Background

Customs requires fingerprints to conduct background checks for various reasons. See, T.D. 93–18 (58 FR 15770, dated March 24, 1993). In a **Federal Register** notice published March 3, 1998 (63 FR 10426) Customs announced that the fingerprint fee was $20.70. This fee was for manually conducting fingerprinting on fingerprint cards. The manual processing of fingerprint cards takes an average of four to seven weeks.

Customs is now implementing, at certain airports, a computerized fingerprint identification system for the use of conducting background checks on airline and airport employees who require unescorted access to Federal Inspection Service areas of an airport. This system employs an automated fingerprint reading devise that electronically transmits the fingerprint data directly to the Federal Bureau of Investigation (FBI) where a criminal history background search can be conducted within 24 hours, instead of the four to seven weeks it normally takes to process fingerprint cards. Where implemented, this computerized fingerprinting system will be used in lieu of collecting fingerprints on cards.

The fee for this computerized fingerprinting will be $39.00. This fee is based on Customs recovering the FBI user-fee that is charged to Customs for conducting fingerprint checks and Customs administrative processing costs associated with the collection of fingerprints, which include the compensation and/or expenses of Customs officers performing the fingerprint service and 15% of that amount to cover Customs administrative overhead costs.

Dated: July 5, 2000.

Charles W. Winwood,

Deputy Commissioner.

[FR Doc. 00–17462 Filed 7–10–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Identity of Owner of Registered Securities and Certificate of Identity of Owner of Savings and Retirement Securities.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Identity of Owner of Registered Securities and Certificate of Identity of Owner of Savings and Retirement Securities.

OMB Number: 1535–0048

Form Numbers: PD F 0385 and PD F 0385–1

Abstract: The information is requested to establish the identity of the owner of United States Savings Bonds/Notes or Registered Securities.

Current Actions: None

Type of Review: Extension

Affected Public: Individuals.

Estimated Number of Respondents: 177

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 89

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17453 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application for disposition of United States registered securities and related checks without administration of deceased owner's estate.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition of United States Registered Securities and Related Checks Without Administration of Deceased Owner's Estate.

OMB Number: 1535–0058.

Form Number: PD F 1646.

Abstract: The information is requested to support a request for distribution of registered securities belonging to a decedent's estate that is not being administered.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 625.

Estimated Time Per Respondent: 90 minutes.

Estimated Total Annual Burden Hours: 938.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17454 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Affidavit by individual surety.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Affidavit By Individual Surety.

OMB Number: 1535–0100.

Form Number: PD F 4094.

Abstract: The information is requested to support a request to serve as surety for an indemnification agreement on a Bond of Indemnity.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 55 minutes.

Estimated Total Annual Burden Hours: 460.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17455 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request by owner of savings bonds/notes deposited in safekeeping when original custody receipts are not available.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Owner Or Person Entitled To Payment Or Reissue Of United States Savings Bonds/Notes Deposited In Safekeeping When Original Custody Receipts Are Not Available.

OMB Number: 1535–0063.

Form Number: PD F 4239.

Abstract: The information is requested to establish ownership and request reissue or payment when original custody receipts are not available.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 84.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17456 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning collections of information required to comply with the terms and conditions of FHA debentures.

DATES: Written comments should be received on or before September 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Titles: FHA New Account Request, FHA Transaction Request, FHA Debenture Transfer Request

OMB Number: 1535–0120.

Form Numbers: PD F 5366, 5354, and 5367.

Abstract: The information is used to (1) establish a book-entry account; (2) change information on a book-entry account; and (3) transfer ownership of a book-entry account on the HUD system, maintained by the Federal Reserve Bank of Philadelphia.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households, businesses or other for-profit.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 102.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–17457 Filed 7–10–00; 8:45 am]

BILLING CODE 4810–39–P

Corrections

Federal Register

Vol. 65, No. 133

Tuesday, July 11, 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.

DEPARTMENT OF LABOR

Mine Safety and Health Administration (MSHA)

30 CFR Part 3

Office of Management and Budget Control Numbers Under the Paperwork Reduction Act

Correction

In rule document 00–16528 beginning on page 40498 in the issue of Friday, June 30, 2000 make the following correction:

§3.1 [Corrected]

On page 40501, in Table 1, in §3.1, under the heading ''Subchapter O '', ''171.403 '' should read ''71.403 ''.

[FR Doc. C0–16528 Filed 7–10–00; 8:45 am]

BILLING CODE 1505–01–DCORRECTIONS

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

Correction

In notice document 00–16322 beginning on page 39952 in the issue of Wednesday, June 28, 2000, make the following correction:

On page 39952, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the tenth line, ''OMB control number 1210–0101'' should read ''OMB control number 1210–0102''.

[FR Doc. C0–16322 Filed 7–10–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 11, 2000

Part II

Social Security Administration

20 CFR Parts 404 and 416

Determining Disability and Blindness; Substantial Gainful Activity Guides; Final Rule

Social Security Acquiescence Rulings; Notices

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AB73

Determining Disability and Blindness; Substantial Gainful Activity Guides

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules to reflect amendments to the Social Security Act (the Act) concerning the trial work period and the disability insurance reentitlement period. We are also clarifying certain standards we use to determine whether work is substantial gainful activity and whether an individual is entitled to a trial work period, thereby further explaining how we determine disability under titles II and XVI of the Act.

EFFECTIVE DATE: These regulations are effective August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, SSA Regulations Officer, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–3632 or TTY 1–800–988–5906. For information about eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internal web site, SSAOnline, at www.SSA.gov.

SUPPLEMENTARY INFORMATION: These regulations explain how we determine whether a person is entitled to a period of trial work under title II of the Act and whether a person is engaging in substantial gainful activity under titles II and XVI of the Act. The term ''substantial gainful activity'' combines two concepts, substantial work activity and gainful work activity. Substantial work activity means work activity that involves doing significant physical or mental activities, even if the work is done on a part-time basis or with less activities, pay, or responsibilities than in past work. Gainful work activity means work activity done for pay or profit. Work activity is gainful if it is the kind of work that is usually performed for pay or profit, whether or not a profit is realized.

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 6, 1995 (60 FR 12166). In the NPRM, we proposed to make revisions to a number of sections that address our rules for determining whether an individual is engaging in substantial gainful activity. The NPRM included certain changes in proposed §§ 404.1574(a)(3)–(6) and 416.974(a)(3)–(6) to clarify our policies on ''subsidy.'' In part because of public comments we received on the NPRM and because we want to consider further issues with regard to our policies concerning on-the-job subsidies provided by employers and on-the-job assistance provided by others, we have decided not to publish final rules with regard to the proposals on ''subsidy'' in proposed §§ 404.1574(a)(3)–(6) and 416.974(a)(3)–(6). However, we are publishing final rules for the remaining proposals in the NPRM, some of which have been modified in response to public comments. We discuss in detail the comments we received on the NPRM later in this preamble under ''Public Comments on Notice of Proposed Rulemaking.'' In addition, in these final rules, we have made certain changes from the proposed rules for technical accuracy and, consistent with the government's ''plain language'' initiative, to make our rules easier to read and understand. We have also included in these final rules several additional amendments to our regulations that, although not a part of the proposals in the NPRM, are necessary to reflect amendments to the Act relating to determinations of substantial gainful activity or the counting of trial work period months. These additional amendments affect §§ 404.15771 and 416.971, discussed below, and §§ 404.1584(d) and 404.1592(b), discussed later in this preamble.

In these final rules, we have made changes to §§ 404.1571 and 416.971 to reflect the provisions in sections 223(d)(4) and 1614(a)(3)(E) of the Act that were added by section 201 of Public Law (Pub. L.) 103–296, the Social Security Independence and Program Improvements Act of 1994. Under sections 223(d)(4) and 1614(a)(3)(E) of the Act, the Commissioner of Social Security (the Commissioner) is required to establish by regulations the criteria for determining when services performed by an individual or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In general, these sections of the Act provide that an individual whose services or earnings meet the criteria established by the Commissioner shall be found to be not disabled. The provisions added to the Act by Pub. L. 103–296 provide, in general, that the Commissioner shall make determinations of substantial gainful activity under these sections ''without regard to the legality'' of the work activity of the individual. We have included in these final rules changes to §§ 404.1571 and 416.971 to reflect these provisions of the Act. We have revised the first sentence of each of these sections to indicate that the work, without regard to legality, that an individual has done during any period in which the individual believes that he or she is disabled may show that he or she is able to work at the substantial gainful activity level. We explain our reasons for publishing these changes as final rules without notice-and-comment rulemaking at the end of this preamble.

We have revised §§ 404.1573(c) and 416.973(c) to explain in greater detail what we mean by work under special conditions that take into account an individual's impairments. We added information found in Social Security Ruling (SSR) 84–25, ''Titles II and XVI: Determination of Substantial Gainful Activity If Substantial Work Activity Is Discontinued or Reduced—Unsuccessful Work Attempt'' (Social Security Rulings, Cumulative Edition, 1984, p. 92), to clarify these regulatory provisions. As discussed later in this preamble, we also revised the paragraph in response to public comments.

We have amended §§ 404.1574(a) and 416.974(a) to add an expanded description of how we determine whether work performed by an employee is substantial gainful activity, what we mean by subsidized work, and how we determine the value of a subsidy. The changes reflect the interpretations in SSR 83–33, ''Titles II and XVI: Determining Whether Work Is Substantial Gainful Activity—Employees'' (Social Security Rulings, Cumulative Edition, 1983, p. 209).

These final rules also make changes to §§ 404.1574(b)(2), (b)(3), (b)(4), and (b)(6) and §§ 416.974(b)(2), (b)(3), (b)(4), and (b)(6) to clarify how we evaluate earnings from work in sheltered workshops. In paragraphs (b)(2), (b)(3), and (b)(6) of these sections, we provide thresholds that demonstrate earnings that ordinarily show that a person has engaged in substantial gainful activity (paragraph (b)(2)), that a person has not engaged in substantial gainful activity (paragraph (b)(3)), or that are not high or low enough to show whether a person has engaged in substantial gainful activity. Our intent is, and always has been, that paragraphs (b)(3) and (b)(6) apply only to workers who are not in sheltered workshops. This is because we ordinarily consider that individuals in sheltered workshops are not engaging in substantial gainful activity when they do not earn more than the threshold

amounts in paragraph (b)(2). In other words, we do not provide a ''middle ground'' category for workers in sheltered workshops, as we do for other workers under paragraph (b)(6), in recognition of the special circumstances of sheltered employment. We believe that the final rules now state this longstanding policy more clearly. The final rules also state more clearly our policy of evaluating sheltered workshop earnings that exceed the amount specified in paragraph (b)(2) in the same way we evaluate non-sheltered workshop earnings.

As a result of these clarifications in our final regulations, we are rescinding Acquiescence Ruling (AR) 87–4(8), *Iamarino* v. *Heckler* (Social Security Rulings, Cumulative Edition, 1987, p. 136; 55 FR 28302, August 31, 1987). We issued this acquiescence ruling in response to a decision of the U.S. Court of Appeals for the Eighth Circuit in *Iamarino* v. *Heckler*, 795 F.2d 59 (8th Cir. 1986). In the absence of regulations explicitly addressing the issue, the court in *Iamarino* held that, because our regulations provided a middle ground for evaluating earnings from competitive (*i.e.,* non-workshop) employment between specified upper and lower limits, we must also provide a middle ground for evaluating sheltered workshop earnings and not presume that an individual has engaged in substantial gainful activity when sheltered workshop earnings exceed the upper substantial gainful activity threshold amount. The revisions in these final rules make clear in our regulations that, ordinarily, we will find any individual, whether in competitive or sheltered work, to be engaging in substantial gainful activity when his or her earnings exceed the threshold for such earnings set out in §§ 404.1574(b)(2) and 416.974(b)(2). We clarify that the middle ground of earnings for individuals in competitive employment (i.e., the middle ground where we do not consider the earnings to be high or low enough to show whether a person has engaged in substantial gainful activity) lies *below* the upper threshold for substantial gainful activity in paragraph (b)(2) and above a *lower* threshold in paragraph (b)(3). Finally, we clarify that for individuals who are employed in sheltered workshops and whose earnings do not exceed the upper threshold above which we ordinarily find substantial gainful activity for all individuals, we will ordinarily find that there is *not* substantial gainful activity even when their earnings fall in the range that would constitute the middle ground of earnings for individuals in competitive employment.

We have also added new §§ 404.1574(d) and 416.974(d) and revised § 404.1592(b) to provide that we will not consider volunteer work done under programs mentioned in the Domestic Volunteer Service Act of 1973, 42 U.S.C. 5044, or the Small Business Act, 15 U.S.C. 637, in determining whether an individual has performed substantial gainful activity or, for individuals receiving benefits under title II of the Act, services in the trial work period. This exclusion is currently stated in SSR 84–24, ''Titles II and XVI: Determination of Substantial Gainful Activity For Persons Working In Special Circumstances—Work Therapy Programs in Military Service—Work Activity in Certain Government-Sponsored Programs'' (Social Security Rulings, Cumulative Edition, 1984, p. 87), and as required by the laws cited above.

We have also added new §§ 404.1574a and 416.974a to explain how we average earnings to determine if a person has been performing substantial gainful activity and the periods used for averaging. These amendments are based on SSR 83–35, ''Titles II and XVI: Averaging of Earnings in Determining Whether Work Is Substantial Gainful Activity'' (Social Security Rulings, Cumulative Edition, 1983, p. 237), and do not represent a change in practice.

We have revised § § 404.1575(a) and 416.975(a) to explain the order in which we will apply the three tests used to determine whether self-employed persons have engaged in substantial gainful activity. We also expanded the discussion in §§ 404.1575(c) and 416.975(c) of what we mean by substantial income for purposes of determining whether a self-employed person has engaged in substantial gainful activity. These revisions are based on SSR 83–34, ''Titles II and XVI: Determining Whether Work Is Substantial Gainful Activity—Self-Employed Persons'' (Social Security Rulings, Cumulative Edition, 1983, p. 222), and do not represent a change in practice.

We also made a nonsubstantive, technical correction to final §§ 404.1575(c)(2) and 416.975(c)(2) for consistency of language within our regulations. Both the former rules and the NPRM stated that we would consider self-employment income to be ''substantial'' if it averaged less than the amounts described in §§ 404.1574(b)(2) and 416.974(b)(2) but was either comparable to what the individual earned before he or she became ''severely impaired'' or was comparable to that of unimpaired self-employed persons in the community who were in the same or a similar business as their means of livelihood. However, the word ''severe'' in our regulations is a term of art under §§ 404.1520 and 416.920 and other regulations throughout subpart P of part 404 and subpart I of part 416, and it does not have the same meaning that we intended in §§ 404.1575(c)(2) and 416.975(c)(2). Therefore, we have revised the final rules to make our intent clear by changing the phrase ''severely impaired'' to ''seriously impaired.'' (For similar reasons, we are making the same changes in §§ 404.1574(b)(4) and 416.974(b)(4).)

We added to §§ 404.1574, 404.1575, 416.974, and 416.975 an explanation, now found in SSR 84–25, of how we evaluate brief periods of work activity to determine if they should be considered ''unsuccessful work attempts.'' The rules provide, consistent with SSR 84–25, that, ordinarily, work an individual has done will not show the ability to do substantial gainful activity if, after working for a period of 6 months or less, the individual was forced by his or her impairment to stop working or to reduce the amount of work so that earnings from such work fall below the substantial gainful activity earnings level. The work must also satisfy certain other conditions described in the regulations. The final rules also provide that we will not consider work performed at the substantial gainful activity level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or why earnings were reduced to below the substantial gainful activity earnings level.

The criteria for an unsuccessful work attempt differ depending on whether the work effort is for a duration of 3 months or less or for a duration of between 3 and 6 months. These amendments reflect the interpretation in SSR 84–25.

In addition, we have added to § 404.1584(d) the substantial gainful activity earnings guidelines for evaluating the work activity of blind persons under title II for the years 1983 through 2000. We also explain, consistent with section 223(d)(4)(A) of the Act, that effective with 1996, the substantial gainful activity amount for blind individuals is no longer linked to the monthly exempt amount under the retirement earnings test for individuals aged 65 to 69. Beginning 1996, increases in the substantial gainful activity level for blind individuals depend only on the increases in the national average wage index. We are including this provision in § 404.1584(d) of the final rules to reflect this statutory change,

which resulted from amendments to the Act made by section 102 of Pub. L. 104–121. We explain our reasons for publishing final rules to reflect this statutory change without notice-and-comment rulemaking at the end of this preamble.

We have also included in these final rules an amendment to § 404.1592(b) to reflect an amendment to the definition of ''services'' in section 222(c)(2) of the Act which applies in determining when the trial work period has ended. Section 222(c)(2) of the Act, as amended, provides that, for purposes of the trial work period, ''the term 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.'' The parenthetical phrase ''(whether legal or illegal)'' was added to this provision of the Act by section 201 of Pub. L. 103–296. In these final rules, we are adding the same parenthetical phrase to the definition of ''services'' in § 404.1592(b). We explain our reasons for publishing final rules to reflect this change without notice-and-comment rulemaking at the end of this preamble.

We also have revised the fourth sentence of § 404.1592(b) to explain in clearer and more precise terms the type of activity that generally does not constitute ''services'' as that term is defined in section 222(c)(2) of the Act, quoted above. This revision clarifies that we generally do not consider work that is done without remuneration to be ''services'' for purposes of determining when the trial work period has ended if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. We have also added a new sentence at the end of § 404.1592(b) to state that we do not consider work as a volunteer in the Federal programs described in § 404.1574(d) in determining whether an individual has performed services in the trial work period.

We have revised § 404.1592(d) to explain, consistent with SSR 82–52, ''Titles II and XVI: Duration of Impairment'' (Social Security Rulings, Cumulative Edition, 1982, p. 106), that a claimant is not entitled to a trial work period when he or she performs work demonstrating the ability to engage in substantial gainful activity within 12 months after the onset of an impairment that otherwise could be the basis for a finding of disability and before the date of any notice of determination or decision making a finding of disability. These revisions, which do not represent a change in practice, are based on our interpretation of the duration requirement of section 223(d)(1)(A) of the Act and clarify the issues raised by the courts in *McDonald* v. *Bowen*, 800 F.2d 153 (7th Cir. 1986), amended on rehearing, 818 F.2d 559 (7th Cir. 1987), *Walker* v. *Secretary of Health and Human Services*, 943 F.2d 1257 (10th Cir. 1991), and *Newton* v. *Chater*, 92 F.3d 688 (8th Cir. 1996). We have issued acquiescence rulings for each of these cases, and do not currently plan to rescind the acquiescence rulings. (See AR 88–3(7), *McDonald* v. *Bowen*, Social Security Rulings, Cumulative Edition, 1988, p. 115, and 55 FR 28302, March 31, 1988; AR 92–6(10), *Walker* v. *Secretary of Health and Human Services*, Social Security Rulings, Cumulative Edition, 1992, p. 91, and 57 FR 43007, September 17, 1992; and AR 98–1(8), *Newton* v. *Chater*, 63 FR 9037, February 23, 1998.)

The trial work period is a period during which a person who becomes entitled to title II disability benefits may test his or her ability to work and still be considered disabled. Under section 222(c)(3) of the Act, the trial work period begins with the month an individual ''becomes entitled'' to title II disability benefits and generally ends after 9 months of work within a 60-consecutive-month period whether or not the 9 months are consecutive. Section 222(c) provides that any services rendered during the trial work period may not be considered in determining whether ''disability has ceased'' during that period.

In order to be found disabled under section 223(d)(1)(A), an individual must be unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or ''which has lasted or can be expected to last for a continuous period of not less than 12 months.'' Under our longstanding interpretation of this provision, as reflected in SSR 82–52, the duration requirement to establish disability will not be met and a disability claim will be denied based on evidence that, within 12 months after the onset of an impairment which prevented substantial gainful activity and before we have issued any notice of determination or decision finding disability, the impairment no longer prevents substantial gainful activity. Under these circumstances, it is not necessary to determine whether earlier in the 12-month period the impairment was expected to prevent the performance of SGA for 12 months. We determine whether an impairment is expected to prevent substantial gainful activity for 12 months only when the claim is being adjudicated within 12 months after the onset of the person's inability to work and the evidence shows that the impairment currently prevents substantial gainful activity. We believe that Congress provided that disability can be found based on an impairment which ''can be expected to last'' 12 months simply to provide a means for us to adjudicate disability claims without having to wait 12 months from onset, rather than to permit claims to be allowed in the face of specific evidence that the claimant's impairment did not, in fact, prevent him or her from engaging in substantial gainful activity for 12 continuous months.

Because section 222(c) provides that a trial work period shall begin with the month in which a person becomes entitled to title II disability benefits, a claimant who does not become entitled to disability benefits cannot receive a trial work period. Under our interpretation of the duration requirement, a person cannot be found to be under a disability if he or she performs work demonstrating the ability to perform substantial gainful activity within 12 months after onset and before we have issued any notice of determination or decision finding disability. Because the person cannot become entitled to disability benefits in this situation, there can be no trial work period. On the other hand, if a claimant returns to work before we have made a determination or decision finding disability, but more than 12 months from onset, the duration requirement may be satisfied (unless it is not satisfied for some other reason, such as medical improvement less than 12 months after onset), the claimant may become entitled to benefits, and the work may be protected by the trial work period even though the work began prior to a finding of disability.

We have made several changes in § 404.1592(d)(1) and (2), which describe situations in which an individual is and is not entitled to a trial work period. We revised paragraph (d)(1) from the proposed rule by replacing ''receiving'' with ''entitled to.'' We made this change in order to clarify, consistent with our discussion in the preambles to both the proposed rules and these final rules, that a person may be awarded a trial work period as part of the adjudication of an initial application when he or she returns to work more than 12 months from onset, but prior to the adjudication and prior to the receipt of any disability benefits. We also made nonsubstantive changes to paragraphs (d)(1) and (d)(2)(i) for greater consistency between these two paragraphs and made other slight technical changes to paragraph

(d)(2) from the proposed rule for additional clarity. None of these revisions is intended as a change in practice. As in the NPRM, we deleted the rule in prior paragraph (d)(2)(ii) which stated that an individual is not entitled to a trial work period if he or she is receiving disability insurance benefits in a second period of disability for which a waiting period was not required. This deletion reflects section 5112 of Pub. L. 101–508.

As in the NPRM, we added new paragraphs (d)(2)(ii), and (d)(2)(iii), and (d)(2)(iv) to § 404.1592 specifying additional circumstances in which an individual will not be entitled to a trial work period. Final paragraph (d)(2)(ii) provides that an individual who performs work demonstrating the ability to engage in substantial gainful activity during any required waiting period will not be entitled to a trial work period. Paragraph (d)(2)(iii) incorporates the provision, discussed above in this preamble, that explains that an individual who performs work demonstrating the ability to engage in substantial gainful activity within 12 months after onset and before the date of any notice of determination or decision finding disability will also not be entitled to a trial work period. Both of these provisions were in the NPRM, although we did make several minor clarifications to the language we proposed for paragraph (d)(2)(iii): We changed the word ''which'' to ''that'' and we expanded the word ''decision'' to the phrase ''determination or decision.'' The latter was a technical change made for consistency with § 404.901, which provides that the words ''determination'' and ''decision'' are terms of art in our program applicable to initial and reconsideration determinations and administrative law judge or Appeals Council decisions, respectively. The revision merely rectifies an unintentional omission in the NPRM and will make clear that these rules apply at all levels of the administrative review process. Finally, we made a revision to clarify that a person may be entitled to a trial work period if he or she returns to substantial gainful activity within 12 months of onset and after receiving a notice of a determination or decision finding that he or she is disabled even in the relatively unusual situation in which that notice precedes the notice of a determination or decision awarding him or her title II disability benefits.

Final § 404.1592(d)(2)(iv) clarifies our rules, consistent with current § 404.1592(e), that an individual cannot be entitled to a trial work period for any month prior to the month he or she files an application for disability benefits. We revised final § 404.1592(d)(2)(iv) from the language we proposed in the NPRM to avoid a possible interpretation we had not intended that might have precluded trial work periods for some individuals who should be entitled to trial work periods. We explain our reasons for this revision in more detail in the public comments section of this preamble.

We revised § 404.1592(e) to reflect a provision of section 5112 of Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990, which provides that one of the conditions under which the trial work period will end is the 9th month within a period of 60 consecutive months if that 9th month is after December 1991. Prior to this statutory change, the trial work period would end after 9 service months no matter when they were completed.

We amended § 404.1592a to clarify that the earnings averaging and unsuccessful work attempt criteria do not apply in determining whether to pay benefits for any month during or after the reentitlement period after disability has been determined to have ceased because of the performance of substantial gainful activity. Those criteria do apply during and after the reentitlement period in determining whether disability has ceased due to the performance of substantial gainful activity.

Based on several public comments, we revised the proposed rules to clarify our intent, especially in the provisions of § 404.1592a(a). These amendments reflect and clarify our interpretations in SSR 83–35 and SSR 84–25. They also clarify the averaging methodology issue addressed in *Conley* v. *Bowen*, 859 F.2d 261 (2d Cir. 1988). As a result of these clarifications to our regulations, we are rescinding the *Conley* v. *Bowen* Acquiescence Ruling, AR 93–2(2). Other final rules also provide cross-references to § 404.1592a in the explanations of the averaging and unsuccessful work attempt policies contained in § § 404.1574(c), 404.1574a, and 404.1575(d).

These regulations also reflect section 9010 of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987, which extended, as of January 1, 1988, the reentitlement period from 15 months to 36 months. During this period, the title II disability benefits of an individual whose benefits are stopped because of substantial gainful activity may be reinstated without the need to file a new application if his or her work falls below the substantial gainful activity level as long as the individual continues to have a ''disabling impairment'' as defined in § 404.1511 of our regulations. This statutory change is reflected in amendments to § § 404.321, 404.325 and 404.1592a.

Pub. L. 99–643, the Employment Opportunities for Disabled Americans Act, required a number of changes in the way we handle supplemental security income (SSI) cases under title XVI when a disabled person eligible for SSI benefits works. Certain SSI recipients who work despite otherwise disabling impairments and begin to earn amounts that would ordinarily represent substantial gainful activity will not have their earnings considered when determining whether they continue to be disabled. Pursuant to section 4 of Pub. L. 99–643, the trial work period and the reentitlement period no longer apply in SSI disability cases. Accordingly, we have deleted § § 416.973(f), 416.976(f)(2), 416.992, 416.992a, and 416.994(b)(3)(v), (b)(5)(i), the first paragraph of (b)(6)(i), (b)(6)(i)(D), and (b)(6)(ii). We have revised § § 416.901(m), 416.991, and 416.1331(a) by removing references to the trial work period and reentitlement period. (The rules for continuing disability in § 416.994a for children under SSI did not need modification because we took these changes in the law into account when we first promulgated that regulation. See 56 FR 5534 (February 11, 1991).) A substantial gainful activity test is still necessary to establish an individual's initial eligibility for SSI benefits based on disability.

Finally, we made a number of minor changes to conform the text of the regulations in part 404 and part 416, for consistency, technical accuracy, and to comply with Executive Order 12866 and the President's memorandum dated June 1, 1998, which requires us to write all rules in ''plain language.'' None of these changes is intended to be a change in practice.

Public Comments on Notice of Proposed Rulemaking

When we published the NPRM in the **Federal Register** on March 6, 1995 (60 FR 12166), we provided interested parties 60 days to submit comments. We received comments from 10 individuals and organizations, including attorneys and organizations representing the interests of individuals with mental impairments. We considered carefully the comments we received on the proposed rules in publishing these final regulations.

As noted at the beginning of this preamble, we decided not to include in these final regulations the changes

reflected in proposed § § 404.1574(a)(3)-(6) and 416.974(a)(3)-(6). We have retained, without change, existing § § 404.1574(a)(3) and 416.974(a)(3). For these reasons, we have not responded to the comments we received on the proposed revisions that we have withdrawn.

Also, there were a few comments that were outside the scope of the NPRM and these final rules. Some commenters provided recommendations for revising our overall work incentive provisions or changing the substantial gainful activity amounts or revising a number of other specific provisions in our rules that were not the subject of the proposed rules. Although we did not summarize or address these comments below because they are outside the scope of these final rules, we have forwarded them to the appropriate SSA components for consideration.

Also, in a separate regulatory action, we published final rules in the **Federal Register** on April 15, 1999 (64 FR 18566 and 64 FR 22903 April 28, 1999) to increase from $500 to $700 the average monthly earnings guidelines used to determine whether work done by a non-blind individual is substantial gainful activity. The change was effective July 1, 1999.

The rest of the comments, which we received on the NPRM and our responses to the comments, are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe we have expressed the views accurately and have responded to all of the relevant issues raised.

General Comments

Comment: One commenter was concerned about what appeared to be a ''negative tone'' and ''clear efforts to 'tighten up' the benefits of work incentives'' throughout the proposed rules. Another commenter, who identified herself as a disability beneficiary who has been attempting to work, commented that the proposed rules reflected, though perhaps not sufficiently, her experiences, and praised the proposal to recognize some factors that ''truly detract from'' substantial gainful activity.

Response: It was certainly not our intent to give the impression that we discourage the attempts of our beneficiaries who want to work to gain employment or that we were ''tightening up'' on beneficiaries'' efforts to try to work. To the contrary, we are supporting on several fronts the efforts of our beneficiaries who want to work to gain employment. Our only intent was to update and clarify our existing rules. Therefore, as we made further changes in the final rules in response to the comments, we were mindful of these overall comments and tried to avoid giving the impression that the first commenter received.

Specific Comments

Section 404.321 When a Period of Disability Begins and Ends

Comment: One commenter recommended that we revise § 404.321(c)(3) more substantively than in the proposed rules, in which we proposed only to update the language to delete the reference to the ''15-month'' reentitlement period. The commenter suggested that the regulation should be revised to clarify that payment status may end during the reentitlement period, but that a period of disability cannot end due to substantial gainful activity before the end of the reentitlement period, and to make § 404.321 consistent with proposed § 404.325.

Response: We did not adopt the comment. The ''clarification'' suggested by the commenter would have changed the meaning of the regulation and our intent, which *is* to provide that a ''period of disability'' under section 216 of the Act may end during the reentitlement period, as required by the Act. Section 216(i)(2)(D) of the Act provides that a period of disability will end with the close of whichever of several months is the earliest. One such month listed in section 216(i)(2)(D) is ''the month preceding * * * the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 36-month period referred to in such section [i.e., the reentitlement period].'' Thus, § 404.321(c)(3) reflects section 216(I)(2)(D) of the Act. Section 404.325 reflects the provision of section 223(a)(1) of the Act, which defines the ''termination month'' for purposes of determining when entitlement to disability insurance benefits terminates. In some cases, entitlement to a period of disability and entitlement to disability insurance benefits may end simultaneously with the month preceding the termination month. However, under the Act, entitlement to a period of disability will end with an earlier month if the above-quoted provision of section 216(I)(2)(D) applies.

Section 404.325 The Termination Month

Comment: One commenter noted that the examples in the proposed rules used dates in the past, thereby showing only ''retroactive'' cessations well in the past.

Response: We adopted the comment. We changed the dates in § 404.325 and throughout the final rules to be more current. However, it should be understood that with the passage of time, these dates will also fall farther and farther in the past.

Comment: The same commenter, and several others, suggested that we revise § 404.325 to eliminate the possibility of retroactive cessations of disability and disability benefit payments under title II based on substantial gainful activity. One suggested that we not cease the payment of benefits under these circumstances earlier than the month we send the beneficiary a notice stating that cash benefits are being stopped. Another suggested that we not retroactively cease disability or cash benefits based on work and earnings at the substantial gainful activity level unless the person fails to report work and earnings to us timely.

Response: We did not adopt the comments. Section 404.325 does not deal specifically with the determination as to when a title II beneficiary's disability ceases due to the performance of substantial gainful activity. That determination is made under the provisions of § § 404.1594(d)(5), (g)(3) and (g)(4) of the regulations. As pertinent here, these provisions of the regulations, which are based on section 223(d)(4) and (f) of the Act, provide that we will find that an individual's disability ceased in the month in which the individual demonstrated the ability to engage in substantial gainful activity following completion of a trial work period, or if the individual is not entitled to a trial work period, in the month in which the individual does substantial gainful activity.

Section 404.325 reflects the provisions of section 223(a)(1) of the Act, as well as the parallel provision of section 202(d), (e) and (f) of the Act, which define the ''termination month'' for the purpose of prescribing when entitlement to title II benefits based on disability ends. In the absence of the occurrence of another event specified in the Act that requires the termination of entitlement to benefits, the aforementioned provisions of the Act provide that, subject to section 223(e) of the Act (discussed below), entitlement to title II benefits based on disability shall end with the month preceding the termination month. (See § § 404.316, 404.337 and 404.352.) Consistent with the provisions of 202(d), (e) and (f) and 223(a)(1) of the Act, § 404.325 provides that for an individual who completes a trial work period and continues to have

a disabling impairment, the termination month will be the third month following the earliest month in which the individual performs substantial gainful activity or is determined able to perform substantial gainful activity, but that in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a. Because entitlement to disability benefits ends with the month preceding the termination month, we cannot pay benefits for months after the month preceding the termination month. This is so even if the termination month occurred in the past. In addition, section 223(e)(1) states: ''No benefit shall be payable * * * for any month, after the third month, in which [the individual] engages in substantial gainful activity during the 36-month period following the end of (the individual's) trial work period * * *.'' Because the law specifies the month(s) for which benefits are not payable during the reentitlement period (i. e., any month, after the third month, in which the beneficiary engages in substantial gainful activity), an individual cannot be paid benefits for any such nonpayment month(s), even if it occurred in the past.

Comment: One commenter did not understand the language of the first example in proposed § 404.325 and suggested revisions to clarify it.

Response: We adopted the comment. However, the language recommended by the commenter was inaccurate, so we did not use the exact language the commenter suggested.

Comment: One commenter recommended that we delete or clarify the proposed second example under § 404.325. The commenter suggested that we should not make a finding of substantial gainful activity unless the work activity is sustained for 6 months; that is, that we should always consider whether the activity is an unsuccessful work attempt and average earnings, and never consider a month of work in isolation.

Response: We clarified the example in response to the comment, but we did not adopt the other suggestions to clarify the rule in the comment. The example in the proposed rule only updated the example in the prior rule to reflect the change in duration of the reentitlement period from 15 months to 36 months and to use more recent dates. The example was correct in that it provided that, under the Act, the termination month must be the third month after the earliest month that we determine an individual performs substantial gainful activity or does work showing the ability to perform substantial gainful activity.

However, in considering the comment, we believe that the example may not have been as clear as it could have been. Our policy, set out in final § 404.1592a(a) and explained in more detail below in our responses to comments about that section, is that when a person with a ''disabling impairment'' works, we will first determine whether the work activity shows that his or her disability has ceased; i.e., by the individual's actual engagement in substantial gainful activity or by demonstrating the individual's ability to engage in substantial gainful activity. When we consider whether the individual's disability has ceased because of work, we do apply our rules regarding unsuccessful work attempts and averaging of earnings when they are relevant to the determination. This does not mean that we will wait 6 months to see whether an individual who has returned to work will be successful; we may decide that the earnings in a single month show that the individual is engaging in substantial gainful activity or has the ability to do so. However, if we have information showing that work was an unsuccessful work attempt, we will not decide that the individual's disability has ceased because of the work activity.

Once we have determined that an individual's disability has ceased because of work activity, we believe that the Act requires us to consider months of work in isolation for purposes of establishing the termination month; that is, we consider only what the earnings show for the relevant month in which the individual works without regard to whether the work could have been an unsuccessful work attempt and without averaging the earnings with earnings from other months. Therefore, we are not revising the rules as the commenter suggested.

The second example in proposed and prior § 404.325 presumed that we had already determined that the individual engaged in substantial gainful activity in the month in which he or she returned to work and that disability had ceased. However, based on the comment, we realize that it could have been difficult to understand, and we have clarified it accordingly. We have also clarified the rules in final § 404.1592a(a) in response to this comment and others, as well as other provisions throughout these final rules, to make clear when we will apply the provisions regarding unsuccessful work attempts and averaging of earnings.

Sections 404.1573(c) and 416.973(c) If Your Work is Done Under Special Conditions

Comment: Two commenters, while agreeing with the policy in the proposed rules, suggested that the rules could discourage some individuals from trying to work. The commenters suggested a reorganization of the paragraph and additional language to be more positive and send a more balanced message about work.

Response: We revised our regulations based on these comments, although we did not use all of the specific language proposed by the commenters.

Comment: Several commenters suggested that we expand the list of examples of special conditions in § § 404.1573(c) and 416.973(c). The suggestions included special assistance from a job coach, counselor, or case manager in performing the work, and when the work is primarily rehabilitative, the individual obtained the job non-competitively, or the duration of work was limited because of therapeutic considerations. However, one commenter viewed the list of examples as exhaustive.

Response: We did not add examples, but we revised the text of the regulations in response to these comments to make clear that the list comprises *only* examples and ''is not limited to'' those examples. We decided not to add to the examples because they are fairly general and the more specific we make our examples, the more likely our examples would be misinterpreted as being exhaustive in nature.

Comment: One commenter stated that there should be a better, clearer distinction made between the examples of special conditions in proposed § § 404.1573(c) and 416.973(c) and indicators of possible subsidy in proposed § § 404.1574(a) and 416.974(a), or that we should indicate how they are related, if they are related.

Response: As noted above, we decided to withdraw the proposed changes reflected in proposed § § 404.1574(a)(3)–(6) and 416.974(a)(3)–(6), regarding subsidies. We also clarified the provisions of § § 404.1573(c) and 416.973(c) in these final rules.

Sections 404.1574 and 416.974 Evaluation Guides if You Are an Employee

Comment: One commenter suggested that in the first sentence under proposed § § 404.1574(a)(1) and 416.974(a)(1) we should delete the clause ''our primary consideration is the earnings that are derived from the work activity'' and that

we should refocus our consideration away from earnings and onto the work activity itself as the clearer indicator of whether substantial gainful activity, or the ability to perform substantial gainful activity, exists.

Response: We did not delete the language, but we clarified our intent in response to the comment. The final rules now provide that, generally, we will first look at the individual's earnings, but we will further evaluate the individual's work activity, if appropriate. The final rules clarify our longstanding interpretation that substantial gainful activity is shown primarily by earnings from work, irrespective of the severity of an individual's impairment. However, these rules also recognize that there are some circumstances in which we should not count all of an individual's earnings. For this reason, a new second sentence in paragraph (a)(1) of the final rules provides that we will use an individual's earnings to determine whether there is substantial gainful activity unless we have information from the individual, his or her employer, or others that shows that we should not count all of the earnings.

Comment: One commenter thought that we should not determine that work is at the substantial gainful activity level until and unless a person earns over the substantial gainful level for a period of at least 6 consecutive months.

Response: We did not adopt the comment. It is reasonable to expect that in many instances an individual will demonstrate the ability to work at the substantial gainful activity level in fewer than 6 months.

Sections 404.1574(c), 404.1575(d), 416.974(c), and 416.975(d) The Unsuccessful Work Attempt

Comment: Two commenters thought that it was not clear whether we would consider if work was an unsuccessful work attempt at the time of an initial application. One commenter noted that it was unclear whether we would consider these rules at each point in the appeals process if the claimant began to work after he or she filed an application but before he or she received a determination or decision on his or her appeal.

Response: We adopted the comments. We revised §§ 404.1574(c) and 404.1575(d) to clarify that we will apply the unsuccessful work attempt concept when we make an initial determination on an application for title II disability benefits and throughout any appeal the individual may request and to provide a cross-reference to the provisions of § 404.1592a(a). We have revised § 404.1592a(a) to explain when we will and will not consider the unsuccessful work attempt concept and the provisions for averaging earnings during and after a reentitlement period. We did not make similar revisions to §§ 416.974(c) and 416.975(d) because we apply the rules in §§ 416.974 and 416.975 only in determining whether an individual is initially eligible for SSI. However, we did add sentences to §§ 404.1574(a), 404.1575(a), 416.974(a), and 416.975(a) to state expressly that all of the provisions of these sections (including the provisions on unsuccessful work attempts) apply at the time of the initial determination and throughout any appeals in connection with the application.

Comment: Two commenters suggested that the existing limit on a period of substantial gainful activity that may be considered an unsuccessful work attempt (*i.e.,* 6 months or less) is too short. They suggested that the number of months be increased to at least 9 months to be consistent with the 9-month trial work period.

Response: We did not adopt the comments. The final rules reflect our longstanding interpretation in SSR 84–25, and our experience which has been that 6 months is a sufficient time period to determine whether a work attempt will be unsuccessful. We do not believe that our interpretation on unsuccessful work attempts is analogous to the 9-month trial work period that is provided under a specific provision of the Act. For example, the ''6-months or less'' for the unsuccessful work attempt refers to a consecutive period of months. The trial work period does not require work to be in 9 consecutive months.

Comment: One commenter requested that we include inappropriate work behavior as a basis for an unsuccessful work attempt in §§ 404.1574(c)(4), 404.1575(d)(4), 416.974(c)(4), and 416.975(d)(4). The commenter noted that although a person's work product or services may be acceptable to an employer or in a business, the behavior may be so inappropriate that the individual may lose his or her job or business.

Response: We decided not to add this example because we believe that the examples given in our rules are general enough to cover a multitude of situations, including inappropriate work behavior due to an impairment. Work may be considered unsatisfactory for a number of reasons; one such reason is that a person exhibits inappropriate behavior with work peers, supervisors or the public to such a degree that it is harmful to the business. Unsatisfactory work due to an impairment already is included as a situation that may result in an unsuccessful work attempt. If an individual's inappropriate behavior at work causes him or her to lose the job in 6 months or less, we may consider this an unsuccessful work attempt. If the employer tolerates the behavior or accommodates the individual by providing special circumstances or work conditions, we would evaluate the value of the services and earnings to determine whether the services are substantial gainful activity.

Sections 404.1574a and 416.974a When and How we Will Average Your Earnings

Comment: One commenter suggested that we should average earnings whenever we decide whether an individual is doing substantial gainful activity, including during and after the 36-month reentitlement period. Another commenter stated that the proposed language for § 404.1574a was unclear with respect to whether averaging applies when deciding whether an individual's cash benefits should be terminated during and after the reentitlement period.

Response: We did not adopt the first comment. However, we clarified the rules in § 404.1592a in response to both comments to make clear when we will average earnings during and after a reentitlement period. In addition, in response to other comments, in § 404.1574a we updated the example and added a second example to better show when we will average earnings during and after a reentitlement period. We will apply the rules on averaging earnings when we make an initial determination on an application for title II disability or title XVI blindness or disability benefits and throughout any appeal the individual may request.

As we explain and clarify in the examples in §§ 404.1574(a) and 404.1592a, we will apply the rules on averaging earnings when we evaluate the work activity of a title II beneficiary to determine if his or her disability has ceased during or after the reentitlement period due to the performance of substantial gainful activity. We will not average earnings after the first month that we determine an individual performed substantial gainful activity during or after the reentitlement period. Thus, as we explain in §§ 404.1574a(d) and 404.1592a, we will not average a title II beneficiary's earnings in determining whether benefits should be paid for any month(s) during or after the reentitlement period that occurs after the month that we determined that disability ceased because of the

performance of substantial gainful activity.

Comment: One commenter stated that the example of averaging did not show when earnings could be averaged and asked that such an example be included.

Response: We added a second example which illustrates completion of the 9-month trial work period in a period of 10 consecutive months, when we will average earnings, and when it is not appropriate for us to average earnings.

Comment: One commenter believed that proposed § 416.974a, for averaging earnings when determining whether an individual is eligible for SSI disability benefits, was inconsistent with section 1619(a) of the Act.

Response: There is no inconsistency. Section 1619 of the Act applies to individuals whom we find eligible based on disability to receive benefits for at least 1 month and who begin work at the substantial gainful activity level in a subsequent month. We average earnings only to determine whether an individual is doing substantial gainful activity at the time he or she applies for SSI benefits to determine if the individual is eligible for SSI benefits. Once an individual is receiving SSI benefits, we do not consider whether he or she is engaging in substantial gainful activity to determine whether he or she continues to be eligible for benefits, consistent with the provisions of section 1619(a).

Section 404.1592(b) What We Mean by Services

Comment: One commenter stated that subsidy and impairment-related work expenses should be considered to reduce countable earnings when determining ''services'' for purposes of counting trial work period months.

Response: Subsidy and impairment-related work expenses are concepts which we use to reduce an employee's gross earnings in a month(s) in determining whether the work he or she has done or is doing is substantial gainful activity. Our regulations which provide for subtracting the value of any subsidy from an individual's gross earnings in determining whether the individual's earnings show that he or she has engaged in substantial gainful activity are based on the rulemaking authority granted to the Commissioner of Social Security under sections 223(d)(4)(A) and 1614(a)(3)(E) of the Act. These sections of the Act provide that the Commissioner ''shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity.'' Our regulations which provide for deducting impairment-related work expenses in determining whether an individual's earnings show that he or she has engaged in substantial gainful activity are based on provisions of these same sections of the Act which specifically require that impairment-related work expenses be excluded in determining whether an individual is able to engage in substantial gainful activity by reason of his or her earnings.

By contrast, the term ''services'' for purposes of counting trial work period months is specifically defined by statute. Section 222(c)(2) of the Act provides that, for purposes of the trial work period, ''the term 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.'' Under this definition, activity which is performed for remuneration or gain (e.g., wages, pay or profit) constitutes ''services'' for purposes of counting trial work period months whether or not an individual's earnings are subsidized or the individual incurs impairment-related work expenses. Consequently, consistent with the definition of ''services'' in section 222(c)(2) of the Act, we do not consider subsidies or impairment-related work expenses when we determine whether an individual has performed ''services'' for purposes of counting trial work period months.

Comment: Another commenter questioned the basis for the proposed revision of the fourth sentence of § 404.1592(b). The commenter interpreted the existing sentence to mean that we generally do not consider certain work, such as work done as therapy or training, to be ''services'' even if the work is done for remuneration. The commenter expressed the view that the proposed revision appeared to represent a change in policy in that it would exclude such work from being considered ''services'' only if the work is done ''without remuneration.''

Response: The revision of the fourth sentence of § 404.1592(b) in these final rules is not a change in interpretation. Rather, it is intended to eliminate an ambiguity in the existing language that could lead to a misinterpretation of the provision. Because of the ambiguity, some, such as the commenter, may have interpreted the existing provision in a manner that is inconsistent with the Act and our intent. Section 222(c)(2) of the Act provides that work activity is ''services'' for trial work period purposes if the activity ''is performed for remuneration or gain *or* is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain'' (emphasis added). Consistent with this provision of the Act, our longstanding interpretation has been that when an individual receives pay or profit in work that is done as therapy or training, we count that work as ''services'' for purposes of counting months of a trial work period. Conversely, we generally do not consider activity that is not performed for pay or profit, and that is done merely as therapy or training (or is the kind of activity usually done in a daily routine around the house or in self-care), as ''services'' for purposes of counting trial work period months. The purpose of the revision in these final rules is to clarify this intent.

Comment: One commenter stated that work activity performed in sheltered workshops or other similar environments is ''pre-vocational and/or training'' in nature and should not be considered ''services'' in determining trial work period months. Other commenters thought that § 404.1592(b) should be revised to exclude any activity that is ''transitional employment'' from being considered ''services'' for purposes of counting trial work period months.

Response: We did not adopt the comments. Whether activity performed by an individual constitutes ''services'' for purposes of the trial work period is determined on a case-by-case basis in accordance with the criteria specified in § 404.1592(b). Consistent with section 222(c)(2) of the Act, discussed above, § 404.1592(b) defines ''services'' to mean any activity, whether or not it is substantial gainful activity, ''which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit.'' We use this standard to determine whether work activity performed by an individual, including work performed in a sheltered workshop or in ''transitional employment,'' constitutes ''services'' for purposes of determining when the trial work period has ended. The criteria in § 404.1592(b) apply whether the activity is performed in competitive employment, in a sheltered workshop, in ''transitional employment,'' in some other type of supported or subsidized employment, or in any other circumstance.

Section 404.1592(d) Who Is and Is Not Entitled to a Trial Work Period

Comment: Several commenters were critical of our proposed revisions to clarify that a claimant is not entitled to

a trial work period when he or she performs work demonstrating the ability to perform substantial gainful activity within 12 months after the alleged onset of disability and before we have issued any notice of determination or decision finding disability. It was contended that this policy is based on an ''overly technical'' statutory interpretation by SSA and is ''completely arbitrary in its application'' because entitlement to a trial work period for similarly situated individuals can depend on whether SSA makes a determination on their claims before or after they return to work.

Response: We did not adopt the comments. As noted in the NPRM, the revisions we are making clarify, but do not change, our interpretation set forth in SSR 82–52. Both the preambles to the NPRM and to these final regulations provide a more detailed explanation and justification for that longstanding interpretation than does SSR 82–52. As those preambles explain, our interpretation is based on the statutory 12-month duration requirement for establishing disability. We believe that our interpretation is a reasonable one that reflects congressional intent that disability claims should not be allowed in the face of evidence that a claimant's impairment(s) did not prevent substantial gainful activity for 12 consecutive months.

The legislative history of the duration requirement indicates the intent of Congress that the disability program not ''result in the payment of disability benefits in cases of short-term, temporary disability.'' S. Rep. No. 404, 89th Cong. 1st Sess. 98–99, *reprinted* in 1965 U.S. Code Cong. & Ad. News 1943, 2038–39. The requirement in the statutory definition of disability of an inability to engage in any substantial gainful activity by reason of an impairment ''which has lasted or can be expected to last for a continuous period of not less than 12 months'' can most reasonably be interpreted to mean that the time of adjudication is the relevant point of reference. If Congress had intended benefits to be awarded based on evidence that a claimant's impairment(s) did not in fact prevent substantial gainful activity for 12 continuous months, but only had been expected to do so at some earlier point in the 12-month period, we believe that Congress would have provided for a finding of disability based on an impairment(s) which *was* expected to last 12 months, in addition to one which *can be* expected to last 12 months.

Furthermore, at the time the trial work period provision was enacted in 1960, the Act defined disability as the inability to engage in substantial gainful activity by reason of an impairment which can be expected to result in death or ''to be of long-continued and indefinite duration.'' It was not until 1965 that the Act was amended to broaden the protection provided by the disability program by replacing the quoted language with the current 12-month duration requirement. Given the definition of disability in effect in 1960, it appears doubtful that Congress intended for the trial work period to be available when a claimant had already demonstrated the ability to perform substantial gainful activity by returning to work before we issue a determination or decision making a finding of disability.

With respect to the contention that our policy is arbitrary because a claimant's entitlement to a trial work period can be affected by the amount of time which passes before SSA adjudicates the claim or by when the application is filed, we recognize that it is possible for different outcomes to occur because of the amount of time needed to carefully and correctly adjudicate a particular claim. However, we believe that such outcomes on the relatively infrequent, but regrettable, occasions in which they occur, are a reasonable consequence of a program that was established by Congress in a way that would implement and accommodate two separate goals: (1) The disability program should not result in the payment of disability benefits in cases of short-term, temporary disability, and (2) claimants whose impairments will prevent them from being able to engage in substantial gainful activity for at least a year should not be required to meet this duration requirement by waiting the full year before they can be awarded and receive benefits. As the program was established, both these goals are accomplished except in the situation in which SSA awards benefits based on a finding that a claimant's inability to engage in substantial gainful activity can be expected to last for at least 12 months, and that prediction later turns out to be incorrect. While an award of benefits in this situation could be viewed as inconsistent with the first goal, such award is necessary in order to permit SSA to adjudicate disability claims and award benefits without having to wait 12 months from onset.

Finally, some claimants can seek relief under the unsuccessful work attempt policy, which permits benefits to be awarded to a claimant who attempts to return to work if that work attempt turns out to be ''unsuccessful'' under the provisions of final §§ 404.1574(c) and 404.1575(d) which are discussed in greater detail earlier in this preamble. We will disregard work attempts lasting 6 months or less that do not demonstrate the ability to perform sustained substantial gainful activity even if the unsuccessful work attempt occurs prior to adjudication of the claim for benefits.

Comment: One commenter was critical of our proposed revisions to § 404.1592(d) that were intended to clarify and be consistent with the provisions of § 404.1592(e). The commenter expressed the opinion that ''(t)he proposed regulation is arbitrary because it treats persons differently, for trial work period purposes, based on the fortuity of when they apply for benefits.''

Response: The proposed revisions and the final rules are consistent with our longstanding regulations which, since 1968, have provided that a trial work period may not begin prior to the month in which the application for benefits is filed. See § 404.1592(e). These regulations are based on section 222(c) of the Act, which provides that a trial work period begins with the month in which a person becomes entitled to disability benefits, and section 223(a)(1)(C) of the Act, which provides that, in order for a person to become entitled to disability benefits, he or she must have filed an application for benefits.

However, in reviewing § 404.1592(d)(2)(iv) of the proposed regulations in connection with these comments, we realized that the language we proposed could be misinterpreted to be more restrictive than we had intended. The proposed rule provided that an individual would not be entitled to a trial work period if he or she performed work demonstrating the ability to engage in substantial gainful activity at any time after the onset of the impairment(s) which prevented the individual from engaging in substantial gainful activity but before the month the individual filed his or her application for disability benefits. Taken literally, this could have prevented us from establishing trial work periods for some individuals we did not mean to exclude. For example, taken literally, the language could have been misinterpreted to exclude individuals whose impairments were not *disabling* at the time of their ''onset'' even though they were the impairments ''which'' ultimately prevented the individuals from working. It might have also been misinterpreted to exclude individuals with episodic impairments, such as mental disorders, that permit them to work intermittently, who might have worked in the past, and who might be

entitled to a trial work period for months after they have filed applications. Therefore, we revised the final rules to state more clearly our policy that we will not grant a trial work period for any month prior to the month of application.

Section 404.1592(e) When the Trial Work Period Begins and Ends

Comment: One commenter recommended that individuals who completed the trial work periods before January 1992 should be ''grandfathered in.'' The commenter stated that individuals who completed their trial work period prior to January 1992 are not covered under the provisions of the law which state that the trial work period must be completed within a consecutive 60-month period. Under provisions effective January 1992, trial work months for the period prior to the 60-month period are not counted in the current 60-month period. Another commenter suggested that we should allow multiple trial work periods within the same period of disability. Another commenter suggested that we consider a trial work period completed only when 9 consecutive months of trial work are performed.

Response: Our longstanding interpretation has been that the statutory requirement for counting the 9 trial work period months in a consecutive 60-month period, which took effect January 1, 1992, does not apply to beneficiaries who complete their trial work period before that date. We believe this policy is consistent with and supported by the statutory language.

Section 404.1592a The Reentitlement Period

Comment: One commenter recommended that we clarify § 404.1592a to indicate when we would apply the policies regarding the unsuccessful work attempt in the reentitlement period. The commenter also asked that we include an example.

Response: As already noted in response to this and other comments, we have revised § 404.1592a(a) in these final rules to explain when we will and will not consider the unsuccessful work attempt and averaging policies during and after the reentitlement period. We did not provide an example because we believe the revised provisions are sufficiently clear.

Beginning with the month following the 9th trial work period month, if an individual continues to have a disabling impairment, he or she is entitled to a 36-month reentitlement period. During the reentitlement period, an individual may continue to test his or her ability to work. At any time after the trial work period ends and during and after the reentitlement period, we will evaluate any work and earnings to determine if it is substantial gainful activity and requires a cessation of disability status. To make this decision, we will, if applicable, average the work and earnings over the actual period of time that the individual worked. This may include work performed during the trial work period or during or after the reentitlement period. We will also consider whether the work was an unsuccessful work attempt and if there were any impairment-related work expenses, subsidy, special conditions or for self-employed individuals, unincurred business expenses. In no event will the cessation of disability based on substantial gainful activity be earlier than the first month after the end of the 9-month trial work period.

If we determine that disability ceased based on substantial gainful activity, then entitlement to disability benefits will terminate as of the third month following the month we find that the individual began substantial gainful activity, but in no event earlier than the first month after the end of the 36-month reentitlement period. We will evaluate all work activity that occurs in or after the third month following the month that we determine disability ceased based on substantial gainful activity on a month-by-month basis. This is because an individual is due payment for the month we find his or her disability ceased based on substantial gainful activity and the two succeeding months, whether or not the individual performs substantial gainful activity during those succeeding months. After those three months, an individual is not due benefits for any month he or she performs substantial gainful activity. However, he or she is due benefits for any month during the reentitlement period in which he or she does not engage in substantial gainful activity. We do not apply the provisions regarding an unsuccessful work attempt in determining whether to pay benefits for any month after the month disability ceased based on substantial gainful activity. Also, we do not average earnings. If we did, this could result in paying an individual less than what he or she is due. Likewise, after the reentitlement period ends, if we have previously determined that disability ceased based on substantial gainful activity during the reentitlement period, we must determine substantial gainful activity based on work and earnings on a month-by-month basis. When we calculate substantial gainful earnings on a month-by-month basis, we continue to consider any impairment-related work expenses, subsidy, and special conditions and for self-employed individuals, unincurred business expenses. If an individual's disability benefits were reinstated during the reentitlement period, they will terminate effective with the first month he or she does substantial gainful activity after the reentitlement period. This is because the individual has already demonstrated the ability to perform substantial gainful activity. We believe this longstanding interpretation is consistent with sections 223(a)(1) and 223(e)(1) of the Act. The intent of the 36-month reentitlement period is to encourage disability beneficiaries to continue working after the 9-month trial work period and after demonstrating the ability to do substantial gainful activity.

Comment: One commenter suggested eliminating the reentitlement period time limit (creating an unending reentitlement period) to make it easier for title II beneficiaries to receive benefits again after their benefits end because they did substantial gainful activity.

Response: We did not adopt the comment. The law specifically provides a 36-month limit to the reentitlement period. To make the changes suggested would require a change in the law.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its NPRM procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. For the reasons that follow, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures with respect to the following changes made to our regulations: (1) The changes made to § § 404.1571 and 416.971 to reflect the provisions of sections 201(a)(4)(A) and 201(b)(4)(A) of Pub. L. 103–296; (2) the changes made to § 404.1592(b) to reflect the provisions of section 201(a)(4)(B) of Pub. L. 103–296; and (3) the changes made to § 404.1584(d) to reflect the provisions of section 102 of Pub. L. 104–121.

Sections 201(a)(4)(A) and 201(b)(4)(A) of Pub. L. 103–296 amended sections 223(d)(4) and 1614(a)(3) of the Act, respectively, to provide that we shall

make determinations of substantial gainful activity with respect to services performed by an individual ''without regard to the legality'' of the services. Section 201(a)(4)(B) of Pub. L. 103–296 added the parenthetical phrase ''(whether legal or illegal)'' into the definition of ''services'' in section 222(c)(2) of the Act to provide that for trial work purposes '' 'services' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.'' These amendments to the Act became effective on August 15, 1994, the date Pub. L. 103–296 was enacted. Section 102 of Pub. L. 104–121, enacted March 29, 1996, amended section 223(d)(4)(A) of the Act to provide that, for years after 1995, an increase in the substantial gainful activity amount for blind individuals under title II of the Act depends only on increases in the national average wage index.

Because the language of the statutory provisions added by these amendments is clear and does not provide for any discretionary policy, we believe that the use of notice-and-comment rulemaking procedures for the issuance of rules to reflect these statutory provisions is unnecessary. On this basis, good cause exists for dispensing with such procedures under the APA. Accordingly, we find that prior notice and comment are unnecessary with respect to these specific changes made to the rules.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB), and OMB has determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, OMB has reviewed these rules. We believe that changes in the number of individuals affected by these rules will be minimal and any associated costs will be cost neutral. We believe that based on these clarifications in our rules, any increase in the number of individuals found performing substantial gainful activity and therefore not disabled or no longer disabled under the Act will be offset by individuals who are working and found not performing substantial gainful activity and disabled because of certain adjustments that we make in calculating earnings for substantial gainful activity purposes. With these rules, we provide clarifications and better descriptions of our interpretations of the Act. We believe this will assist SSA personnel in providing our applicants and beneficiaries with more accurate information about SSA's work incentives (and thus, better service). Also, we believe, that people with disabilities who are working or who want to work will be better able to understand the employment support provisions and better perform their benefits and career planning in attempting to gain and keep employment, join America's mainstream and become more independent.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals who are applying for or receiving title II or title XVI benefits because of disability or blindness. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance. If you have any questions on this issue, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, Maryland 21235–6401, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0483), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set forth in the Preamble, subparts D and P of part 404 and subparts I and M of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.321 is amended by revising paragraph (c)(3) to read as follows:

§ 404.321 When a period of disability begins and ends.

* * * * *

(c) * * *

* * * * *

(3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.

* * * * *

3. Section 404.325 is revised to read as follows:

§ 404.325 The termination month.

If you do not have a disabling impairment, your termination month is the third month following the month in which your impairment is not disabling even if it occurs during the trial work period or the reentitlement period. If you continue to have a disabling impairment and complete 9 months of trial work, your termination month will be the third month following the earliest month you perform substantial gainful activity or are determined able to perform substantial gainful activity; however, in no event will the termination month under these circumstances be earlier than the first month after the end of the reentitlement period described in § 404.1592a.

Example 1: You complete your trial work period in December 1999. You then work at the substantial gainful activity level and continue to do so throughout the 36 months following completion of your trial work period and thereafter. Your termination month will be January 2003, which is the first month in which you performed substantial gainful activity after the end of your 36-month reentitlement period. This is because, for individuals who have disabling impairments (see § 404.1511) and who work, the termination month cannot occur before the first month after the end of the 36-month reentitlement period.

Example 2: You complete your trial work period in December 1999, but you do not do work showing your ability to do substantial

gainful activity during your trial work period or throughout your 36-month reentitlement period. In April 2003, 4 months after your reentitlement period ends, you become employed at work that we determine is substantial gainful activity, considering all of our rules in § § 404.1574 and 404.1574a. Your termination month will be July 2003; that is, the third month after the earliest month you performed substantial gainful activity.

Subpart P—[Amended]

4. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

5. Section 404.1571 is amended by revising the first sentence to read as follows:

§ 404.1571 General.

The work, without regard to legality, that you have done during any period in which you believe you are disabled may show that you are able to work at the substantial gainful activity level. * * *

6. Section 404.1573 is amended by revising paragraph (c) to read as follows:

§ 404.1573 General information about work activity.

* * * * *

(c) *If your work is done under special conditions.* The work you are doing may be done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital. If your work is done under special conditions, we may find that it does not show that you have the ability to do substantial gainful activity. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. However, work done under special conditions may show that you have the necessary skills and ability to work at the substantial gainful activity level. Examples of the special conditions that may relate to your impairment include, but are not limited to, situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, for example, other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work despite your impairment because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

7. Section 404.1574 is amended by revising paragraphs (a), introductory text, (a)(1), (a)(2), (b)(1), (b)(2), introductory text, (b)(3), introductory text, (b)(4), and (b)(6), introductory text, and by adding new paragraphs (c) and (d) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

(a) We use several guides to decide whether the work you have done shows that you are able to do substantial gainful activity. If you are working or have worked as an employee, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both.

(1) *Your earnings may show you have done substantial gainful activity.* Generally, in evaluating your work activity for substantial gainful activity purposes, our primary consideration will be the earnings you derive from the work activity. We will use your earnings to determine whether you have done substantial gainful activity unless we have information from you, your employer, or others that shows that we should not count all of your earnings. The amount of your earnings from work you have done (regardless of whether it is unsheltered or sheltered work) may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We will use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a person with a serious impairment does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2), (3), (4), and (6) of this section. See § 404.1574a for our rules on averaging earnings.

(2) *Earnings that will ordinarily show that you have engaged in substantial*

gainful activity. We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you have engaged in substantial gainful activity if—* * *

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity*. Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—* * *

(4) *If you work in a sheltered workshop*. If you work in a sheltered workshop or a comparable facility especially set up for persons with serious impairments, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings meet the levels in paragraph (b)(2) of this section. Earnings from a sheltered workshop or a comparable facility that are less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information in paragraph (b)(6) of this section regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are less than those indicated in paragraph (b)(2), we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have done substantial gainful activity.

* * * * *

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity*. Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), if your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

* * * * *

(c) *The unsuccessful work attempt*.—(1) *General*. Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, your impairment forced you to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(2) of this section, and you meet the conditions described in paragraphs (c)(2), (3), (4), and (5), of this section. We will use the provisions of this paragraph when we make an initial determination on your application for disability benefits and throughout any appeal you may request. Except as set forth in § 404.1592a(a), we will also apply the provisions of this paragraph if you are already entitled to disability benefits, when you work and we consider whether the work you are doing is substantial gainful activity or demonstrates the ability to do substantial gainful activity.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider that you began a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 404.1573(c). We will consider your prior work to be ''discontinued'' for a significant period if you were out of work at least 30 consecutive days. We will also consider your prior work to be ''discontinued'' if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less*. We will consider work of 3 months or less to be an unsuccessful work attempt if you stopped working, or you reduced your work and earnings below the substantial gainful activity earnings level, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you worked between 3 and 6 months*. We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity earnings level, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months*. We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs*. If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, we will not count any payments you receive from these programs as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act. Programs explicitly mentioned in those Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. We will not exclude under this paragraph, volunteer work you perform in other programs or any nonvolunteer work you may perform, including nonvolunteer work under one of the specified programs. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. We will subtract the value of any subsidy and use the remainder to determine if you have done substantial gainful activity. See paragraphs (a)(2)-(3) of this section.

8. A new § 404.1574a is added to read as follows:

§ 404.1574a When and how we will average your earnings.

(a) If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful

activity earnings levels, we will average your earnings over the entire period of work requiring evaluation to determine if you have done substantial gainful activity. See § 404.1592a for information on the reentitlement period.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

(d) We will not average your earnings in determining whether benefits should be paid for any month(s) during or after the reentitlement period that occurs after the month disability has been determined to have ceased because of the performance of substantial gainful activity. See § 404.1592a for information on the reentitlement period. The following examples illustrate what we mean by a significant change in the work pattern of an employee and when we will average and will not average earnings.

Example 1: Mrs. H. began receiving disability insurance benefits in March 1993. In January 1995 she began selling magazines by telephone solicitation, expending a minimum of time, for which she received $225 monthly. As a result, Mrs. H. used up her trial work period during the months of January 1995 through September 1995. After the trial work period ended, we determined that Mrs. H. had not engaged in substantial gainful activity during her trial work period. Her reentitlement period began October 1995. In December 1995, Mrs. H. discontinued her telephone solicitation work to take a course in secretarial skills. In January 1997, she began work as a part-time temporary secretary in a banking firm. Mrs. H. worked 20 hours a week, without any subsidy or impairment-related work expenses, at beginner rates. She earned $285 per month in January 1997 and February 1997. In March 1997 she had increased her secretarial skills to journeyman level and was assigned as a part-time private secretary to one of the vice presidents of the banking firm. Mrs. H.'s earnings increased to $525 per month effective March 1997. We determined that Mrs. H. was engaging in substantial gainful activity beginning March 1997 and that her disability ceased that month, the first month of substantial gainful activity after the end of the trial work period. Mrs. H. is due payment for March 1997, the month of cessation, and the following 2 months (April 1997 and May 1997) because disability benefits terminate the third month following the earliest month in which she performed substantial gainful activity. We did not average earnings for the period January 1997 and February 1997 with the period beginning March 1997 because there was a significant change in earnings and work activity beginning March 1997. Thus, the earnings of January 1997 and February 1997 could not be averaged with those of March 1997 to reduce March 1997 earnings below the substantial gainful activity level. After we determine that Mrs. H.'s disability had ceased because of her performance of substantial gainful activity, we cannot average her earnings to determine whether she is due payment for any month during or after the reentitlement period. Beginning June 1997, the third month following the cessation month, we would evaluate all of Mrs. H.'s work activity on a month-by-month basis (see § 404.1592a(a)).

Example 2: Ms. M. began receiving disability insurance benefits in March 1992. In January 1995, she began selling cable television subscriptions by telephone solicitation, expending a minimum of time, for which she received $275 monthly. Ms. M. did not work in June 1995, and she resumed selling cable television subscriptions beginning July 1995. In this way, Ms. M. used up her 9-month trial work period during the months of January 1995 through May 1995 and July 1995 through October 1995. After Ms. M.'s trial work period ended, we determined that she had not engaged in substantial gainful activity during her trial work period. Ms. M.'s reentitlement period began November 1995. In December 1995, Ms. M. discontinued her telephone solicitation work to take a course in secretarial skills. In January 1997, she began work as a part-time temporary secretary in an accounting firm. Ms. M. worked, without any subsidy or impairment-related work expenses, at beginner rates. She earned $460 in January 1997, $420 in February 1997, and $510 in March 1997. In April 1997, she had increased her secretarial skills to journeyman level, and she was assigned as a part-time private secretary to one of the vice presidents of the firm. Ms. M.'s earnings increased to $860 per month effective April 1997. We determined that Ms. M. was engaging in substantial gainful activity beginning April 1997 and that her disability ceased that month, the first month of substantial gainful activity after the end of the trial work period. She is due payment for April 1997, May 1997 and June 1997, because disability benefits terminate the third month following the earliest month in which she performs substantial gainful activity (the month of cessation). We averaged her earnings for the period January 1997 through March 1997 and determined them to be about $467 per month for that period. We did not average earnings for the period January 1997 through March 1997 with earnings for the period beginning April 1997 because there was a significant change in work activity and earnings beginning April 1997. Therefore, we found that the earnings for January 1997 through March 1997 were under the substantial gainful activity level. After we determine that Ms M.'s disability has ceased because she performed substantial gainful activity, we cannot average her earnings in determining whether she is due payment for any month during or after the reentitlement period. In this example, beginning July 1997, the third month following the month of cessation, we would evaluate all of Ms. M.'s work activity on a month-by-month basis (see § 404.1592a(a)).

9. Section 404.1575 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both. We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are

in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

* * * * *

(c) *What we mean by substantial income.* We deduct your normal business expenses from your gross income to determine net income. Once we determine your net income, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, *e.g.,* rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in § § 404.1574(b)(2) and 404.1574(b)(3). See § 404.1574a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 404.1574(b)(2); or

(2) It averages less than the amounts described in § 404.1574(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), (4), and (5) of this section. We will use the provisions of this paragraph when we make an initial determination on your application for disability benefits and throughout any appeal you may request. Except as set forth in § 404.1592a(a), we will also apply the provisions of this paragraph if you are already entitled to disability benefits, when you work and we consider whether the work you are doing is substantial gainful activity or demonstrates the ability to do substantial gainful activity.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below substantial gainful activity because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be ''discontinued'' for a significant period if you were out of work at least 30 consecutive days. We will also consider your prior work to be ''discontinued'' if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

10. Section 404.1584 is amended by revising paragraph (d) to read as follows:

§ 404.1584 Evaluation of work activity of blind people.

* * * * *

(d) *Evaluation of earnings.*—(1) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will ordinarily consider that your earnings from your work activities show that you have engaged in substantial gainful activity if your monthly earnings average more than the amount(s) shown in paragraphs (d)(2) and (3) of this section. We will apply §§ 404.1574(a)(2), 404.1575(c), and 404.1576 in determining the amount of your average earnings.

(2) *Substantial gainful activity guidelines for taxable years before 1978.* For work activity performed in taxable years before 1978, the average earnings per month that we ordinarily consider enough to show that you have done substantial gainful activity are the same for blind people as for others. See § 404.1574(b)(2) for the earnings guidelines for other than blind individuals.

(3) *Substantial gainful activity guidelines for taxable years beginning 1978.* For taxable years beginning 1978, if you are blind, the law provides different earnings guidelines for determining if your earnings from your work activities are substantial gainful activity. Ordinarily, we consider your work to be substantial gainful activity, if your average monthly earnings are more than those shown in Table I. For years after 1977 and before 1996, increases in the substantial gainful activity guideline were linked to increases in the monthly exempt amount under the retirement earnings test for individuals aged 65 to 69. Beginning with 1996, increases in the substantial gainful activity amount have

depended only on increases in the national average wage index.

TABLE I

Over	In year(s)
$334	1978
$375	1979
$417	1980
$459	1981
$500	1982
$550	1983
$580	1984
$610	1985
$650	1986
$680	1987
$700	1988
$740	1989
$780	1990
$810	1991
$850	1992
$880	1993
$930	1994
$940	1995
$960	1996
$1,000	1997
$1,050	1998
$1,110	1999
$1,170	2000

11. Section 404.1592 is amended as follows:

a. By revising the first and last sentences of paragraph (b),

b. Adding a new sentence to the end of paragraph (b), and

c. Revising paragraphs (d) and (e).

The revisions and additions to § 404.1592 read as follows:

§ 404.1592 The trial work period.

* * * * *

(b) *What we mean by services.* When used in this section, *services* means any activity (whether legal or illegal), even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. * * * We generally do not consider work done without remuneration to be ''services'' if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. We will not consider work you have done as a volunteer in the Federal programs described in § 404.1574(d) in determining whether you have performed services in the trial work period.

* * * * *

(d) *Who is and is not entitled to a trial work period.* (1) You are generally entitled to a trial work period if you are entitled to disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability.

(2) You are not entitled to a trial work period—

(i) If you are entitled to a period of disability but not to disability insurance benefits, and you are not entitled to any other type of disability benefit under title II of the Social Security Act (i.e., child's benefits based on disability, or widow's or widower's benefits or surviving divorced spouse's benefits based on disability);

(ii) If you perform work demonstrating the ability to engage in substantial gainful activity during any required waiting period for benefits;

(iii) If you perform work demonstrating the ability to engage in substantial gainful activity within 12 months of the onset of the impairment(s) that prevented you from performing substantial gainful activity and before the date of any notice of determination or decision finding that you are disabled; or

(iv) For any month prior to the month of your application for disability benefits (see paragraph (e) of this section).

(e) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to disability insurance benefits, to child's benefits based on disability or to widow's, widower's, or surviving divorced spouse's benefits based on disability. It cannot begin before the month in which you file your application for benefits, and for widows, widowers, and surviving divorced spouses, it cannot begin before December 1, 1980. It ends with the close of whichever of the following calendar months is the earliest:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services if that 9th month is prior to January 1992;

(2) The 9th month (whether or not the months have been consecutive and whether or not the previous 8 months of services were prior to January 1992) in which you have performed services within a period of 60 consecutive months if that 9th month is after December 1991; or

(3) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled. See § 404.1594 for information on how we decide whether your disability continues or ends.

12. Section 404.1592a is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 404.1592a The reentitlement period.

(a) *General.* The reentitlement period is an additional period after 9 months of trial work during which you may continue to test your ability to work if you have a *disabling impairment,* as defined in § 404.1511. If you work during the reentitlement period, we may decide that your disability has ceased because your work is substantial gainful activity and stop your benefits. However, if, after the month for which we found that your disability ceased because you performed substantial gainful activity, you stop engaging in substantial gainful activity, we will start paying you benefits again; you will not have to file a new application. The following rules apply if you complete a trial work period and continue to have a disabling impairment:

(1) The first time you work after the end of your trial work period *and* engage in substantial gainful activity, we will find that your disability ceased. When we decide whether this work is substantial gainful activity, we will apply all of the relevant provisions of § § 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses. We will find that your disability ceased in the first month after the end of your trial work period in which you do substantial gainful activity, applying all the relevant provisions in § § 404.1571–404.1576.

(2) (i) If we determine under paragraph (a)(1) of this section that your disability ceased during the reentitlement period because you perform substantial gainful activity, you will be paid benefits for the first month after the trial work period in which you do substantial gainful activity (i.e., the month your disability ceased) and the two succeeding months, whether or not you do substantial gainful activity in those succeeding months. After those three months, we will stop your benefits for any month in which you do substantial gainful activity. (See §§ 404.316, 404.337, 404.352 and 404.401a.) If your benefits are stopped because you do substantial gainful activity, they may be started again without a new application and a new determination of disability if you stop doing substantial gainful activity in a month during the reentitlement period. In determining whether you do substantial gainful activity in a month for purposes of stopping or starting benefits during the reentitlement period,

we will consider only your work in, or earnings for, that month. Once we have determined that your disability has ceased during the reentitlement period because of the performance of substantial gainful activity as explained in paragraph (a)(1) of this section, we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts or the provisions of § 404.1574a regarding averaging of earnings to determine whether benefits should be paid for any particular month in the reentitlement period that occurs after the month your disability ceased.

(ii) If anyone else is receiving monthly benefits based on your earnings record, that individual will not be paid benefits for any month for which you cannot be paid benefits during the reentitlement period.

(3) The way we will consider your work activity after your reentitlement period ends (see paragraph (b)(2) of this section) will depend on whether you worked during the reentitlement period and if you did substantial gainful activity. If you worked during the reentitlement period and we decided that your disability ceased during the reentitlement period because of your work under paragraph (a)(1) of this section, we will find that your entitlement to disability benefits terminates in the first month in which you engage in substantial gainful activity after the end of the reentitlement period (see § 404.325). (See § 404.321 for when entitlement to a period of disability ends.) When we make this determination, we will consider only your work in, or earnings for, that month; we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts or the provisions of § 404.1574a regarding averaging of earnings. If we did not find that your disability ceased because of work activity during the reentitlement period, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, to determine whether your disability ceased because you performed substantial gainful activity after the reentitlement period. If we find that your disability ceased because you performed substantial gainful activity in a month after your reentitlement period ended, you will be paid benefits for the month in which your disability ceased and the two succeeding months. After those three months, your entitlement to a period of disability or to disability benefits terminates (see §§ 404.321 and 404.325).

(b) * * *

(2)(i) The last day of the 15th month following the end of your trial work period if you were not entitled to benefits after December 1987; or

(ii) The last day of the 36th month following the end of your trial work period if you were entitled to benefits after December 1987 or if the 15-month period described in paragraph (b)(2)(i) of this section had not ended as of January 1988. (See §§ 404.316, 404.337, and 404.352 for when your benefits end.)

13. Section 404.1594 is amended by revising the second sentence of paragraph (f)(7) and by revising paragraph (g)(9) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(f) *Evaluation steps.* * * *

(7) * * * That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. * * *

* * * * *

(g) *The month in which we will find you are no longer disabled.* * * *

(9) The first month you were told by your physician that you could return to work, provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart I—[Amended]

14. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c) and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c) and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

15. Section 416.901 is amended by revising the second sentence of paragraph (m) to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(m) * * * We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status and when we will review to see if you are still disabled. * * *

16. Section 416.971 is amended by revising the first sentence to read as follows:

§ 416.971 General.

The work, without regard to legality, that you have done during any period in which you believe you are disabled may show that you are able to work at the substantial gainful activity level. * * *

17. Section 416.973 is amended by revising paragraph (c) and removing paragraph (f) to read as follows:

§ 416.973 General information about work activity.

* * * * *

(c) *If your work is done under special conditions.* The work you are doing may be done under special conditions that take into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital. If your work is done under special conditions, we may find that it does not show that you have the ability to do substantial gainful activity. Also, if you are forced to stop or reduce your work because of the removal of special conditions that were related to your impairment and essential to your work, we may find that your work does not show that you are able to do substantial gainful activity. However, work done under special conditions may show that you have the necessary skills and ability to work at the substantial gainful activity level. Examples of the special conditions that may relate to your impairment include, but are not limited to, situations in which—

(1) You required and received special assistance from other employees in performing your work;

(2) You were allowed to work irregular hours or take frequent rest periods;

(3) You were provided with special equipment or were assigned work especially suited to your impairment;

(4) You were able to work only because of specially arranged circumstances, for example, other persons helped you prepare for or get to and from your work;

(5) You were permitted to work at a lower standard of productivity or efficiency than other employees; or

(6) You were given the opportunity to work, despite your impairment, because of family relationship, past association with your employer, or your employer's concern for your welfare.

* * * * *

18. Section 416.974 is amended by revising paragraphs (a), introductory text, (a)(1), (a)(2), (b)(1), (b)(2), introductory text, (b)(3), introductory text (b)(4) and (b)(6), introductory text,

and by adding new paragraphs (c) and (d) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

(a) We use several guides to decide whether the work you have done shows that you are able to do substantial gainful activity. If you are working or have worked as an employee, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate in connection with your application for supplemental security income benefits (when we make an initial determination on your application and throughout any appeals you may request) to determine if you are eligible.

(1) *Your earnings may show you have done substantial gainful activity.* Generally, in evaluating your work activity for substantial gainful activity purposes, our primary consideration will be the earnings you derive from the work activity. We will use your earnings to determine whether you have done substantial gainful activity unless we have information from you, your employer, or others that shows that we should not count all of your earnings. The amount of your earnings from work you have done (regardless of whether it is unsheltered or sheltered work) may show that you have engaged in substantial gainful activity. Generally, if you worked for substantial earnings, we will find that you are able to do substantial gainful activity. However, the fact that your earnings were not substantial will not necessarily show that you are not able to do substantial gainful activity. We generally consider work that you are forced to stop or to reduce below the substantial gainful activity level after a short time because of your impairment to be an unsuccessful work attempt. Your earnings from an unsuccessful work attempt will not show that you are able to do substantial gainful activity. We will use the criteria in paragraph (c) of this section to determine if the work you did was an unsuccessful work attempt.

(2) *We consider only the amounts you earn.* When we decide whether your earnings show that you have done substantial gainful activity, we do not consider any income that is not directly related to your productivity. When your earnings exceed the reasonable value of the work you perform, we consider only that part of your pay which you actually earn. If your earnings are being subsidized, we do not consider the amount of the subsidy when we determine if your earnings show that you have done substantial gainful activity. We consider your work to be subsidized if the true value of your work, when compared with the same or similar work done by unimpaired persons, is less than the actual amount of earnings paid to you for your work. For example, when a person with a serious impairment does simple tasks under close and continuous supervision, our determination of whether that person has done substantial gainful activity will not be based only on the amount of the wages paid. We will first determine whether the person received a subsidy; that is, we will determine whether the person was being paid more than the reasonable value of the actual services performed. We will then subtract the value of the subsidy from the person's gross earnings to determine the earnings we will use to determine if he or she has done substantial gainful activity.

* * * * *

(b) *Earnings guidelines.*—(1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 416.976, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 416.976). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2), (3), (4), and (6) of this section. See § 416.974a for our rules on averaging earnings.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from sheltered work, see paragraph (b)(4) of this section) show that you have engaged in substantial gainful activity if—* * *

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), we will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—* * *

(4) *If you work in a sheltered workshop.* If you work in a sheltered workshop or a comparable facility especially set up for persons with serious impairments, we will ordinarily consider that your earnings from this work show that you have engaged in substantial gainful activity if your earnings meet the levels in paragraph (b)(2) of this section. Earnings from a sheltered workshop or a comparable facility that are less than those indicated in paragraph (b)(2) of this section will ordinarily show that you have not engaged in substantial gainful activity without the need to consider the other information in paragraph (b)(6) of this section regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When your earnings from a sheltered workshop or comparable facility are less than those indicated in paragraph (b)(2) of this section, we will consider the provisions of paragraph (b)(6) of this section only if there is evidence showing that you may have done substantial gainful activity.

* * * * *

(6) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* Unless you work in a sheltered workshop or a comparable facility (see paragraph (b)(4) of this section), if your earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, we will generally consider other information in addition to your earnings, such as whether—

* * * * *

(c) *The unsuccessful work attempt*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(2) of this section and you meet the conditions described in paragraphs (c)(2), (3), (4), and (5) of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that were essential to the further performance of your work. We explain what we mean by special conditions in § 416.973(c). We will consider your prior work to be ''discontinued'' for a significant period

if you were out of work at least 30 consecutive days. We will also consider your prior work to be ''discontinued'' if, because of your impairment, you were forced to change to another type of work or another employer.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if you stopped working, or you reduced your work and earnings below the substantial gainful activity earnings level, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you worked between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below the substantial gainful activity earnings level, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently absent from work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity earnings level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity earnings level.

(d) *Work activity in certain volunteer programs.* If you work as a volunteer in certain programs administered by the Federal government under the Domestic Volunteer Service Act of 1973 or the Small Business Act, we will not count any payments you receive from these programs as earnings when we determine whether you are engaging in substantial gainful activity. These payments may include a minimal stipend, payments for supportive services such as housing, supplies and equipment, an expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act. Programs explicitly mentioned in those Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. We will not exclude under this paragraph volunteer work you perform in other programs or any nonvolunteer work you may perform, including nonvolunteer work under one of the specified programs. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. We will subtract the value of any subsidy and use the remainder to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(3) of this section.

19. A new § 416.974a is added to read as follows:

§ 416.974a When and how we will average your earnings.

(a) To determine your initial eligibility for benefits, we will average any earnings you make during the month you file for benefits and any succeeding months to determine if you are doing substantial gainful activity. If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if you have done substantial gainful activity.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

20. Section 416.975 is amended by revising paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate in connection with your application for supplemental security income benefits (when we make an initial determination on your application and throughout any appeals you may request). We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 416.974(b)(2) when considered in terms of its value to the business, or when compared to the salary that an

owner would pay to an employee to do the work you are doing.

* * * * *

(c) *What we mean by substantial income.* We deduct your normal business expenses from your gross income to determine net income. Once net income is determined, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 416.976. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, *e.g.,* rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your income for comparison with the earnings guidelines in §§ 416.974(b)(2) and 416.974(b)(3). See § 416.974a for our rules on averaging of earnings. We will consider this amount to be substantial if—

(1) It averages more than the amounts described in § 416.974(b)(2); or

(2) It averages less than the amounts described in § 416.974(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

(d) *The unsuccessful work attempt.*—(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), (4), and (5) of this section.

(2) *Event that must precede an unsuccessful work attempt.* There must be a significant break in the continuity of your work before we will consider you to have begun a work attempt that later proved unsuccessful. You must have stopped working or reduced your work and earnings below substantial gainful activity because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work. Examples of such special conditions may include any significant amount of unpaid help furnished by your spouse, children, or others, or unincurred business expenses, as described in paragraph (c) of this section, paid for you by another individual or agency. We will consider your prior work to be ''discontinued'' for a significant period if you were out of work at least 30 consecutive days. We will also consider your prior work to be ''discontinued'' if, because of your impairment, you were forced to change to another type of work.

(3) *If you worked 3 months or less.* We will consider work of 3 months or less to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work.

(4) *If you work between 3 and 6 months.* We will consider work that lasted longer than 3 months to be an unsuccessful work attempt if it ended, or was reduced below substantial gainful activity, within 6 months because of your impairment or because of the removal of special conditions which took into account your impairment and permitted you to work and—

(i) You were frequently unable to work because of your impairment;

(ii) Your work was unsatisfactory because of your impairment;

(iii) You worked during a period of temporary remission of your impairment; or

(iv) You worked under special conditions that were essential to your performance and these conditions were removed.

(5) *If you worked more than 6 months.* We will not consider work you performed at the substantial gainful activity level for more than 6 months to be an unsuccessful work attempt regardless of why it ended or was reduced below the substantial gainful activity level.

§ 416.976 [Amended]

21. Section 416.976 is amended by removing paragraph (f)(2) and by redesignating paragraphs (f)(3) through (f)(6) as paragraphs (f)(2) through (f)(5), respectively.

§ 416.991 [Amended]

22. Section 416.991 is amended by removing the parenthetical sentence.

§ 416.992 [Removed and reserved]

23. Section 416.992 is removed and reserved.

§ 416.992a [Removed and reserved]

24. Section 416.992a is removed and reserved.

25. Section 416.994 is amended as follows:

a. By revising the section heading,

b. Removing paragraph (b)(3)(v), and

c. By revising paragraphs (b)(5) and (b)(6).

The revisions to § 416.994 read as follows:

§ 416.994 How we will decide whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are:

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; i.e., whether or not there has been an

increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see § 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with § 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

(6) *The month in which we will find you are no longer disabled.* If the evidence shows that you are no longer disabled, we will find that your disability ended in the earliest of the following months.

(i) The month the evidence shows that you are no longer disabled under the rules set out in this section, and you were disabled only for a specified period of time in the past;

(ii) The month the evidence shows that you are no longer disabled under the rules set out in this section, but not earlier than the month in which we mail you a notice saying that the information we have shows that you are not disabled;

(iii) The month in which you return to full-time work, with no significant medical restrictions and acknowledge that medical improvement has occurred, and we expected your impairment(s) to improve (see § 416.991);

(iv) The first month in which you fail without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4)(iv) of this section applies;

(v) The first month you were told by your physician that you could return to work, provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence; or

(vi) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (b)(4)(ii) of this section applies.

* * * * *

Subpart M—[Amended]

26. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611–1615, 1619 and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, and 1383).

27. Section 416.1331 is amended by revising paragraph (a) to read as follows:

§ 416.1331 Termination of your disability or blindness payments.

(a) *General.* The last month for which we can pay you benefits based on disability is the second month after the first month in which you are determined to no longer have a disabling impairment (described in § 416.911). (See § 416.1338 for an exception to this rule if you are participating in an appropriate vocational rehabilitation program, and § 416.261 for an explanation of special benefits for which you may be eligible.) The last month for which we can pay you benefits based on blindness is the second month after the month in which your blindness ends (see § 416.986 for when blindness ends). You must meet the income, resources, and other eligibility requirements to receive any of the benefits described in this paragraph. We will also stop payment of your benefits if you have not cooperated with us in getting information about your disability or blindness.

* * * * *

[FR Doc. 00–17138 Filed 7–10–00; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 93–2(2); Conley v. Bowen

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 93–2(2)—*Conley* v. *Bowen,* 859 F.2d 261 (2d Cir. 1988).

SUMMARY: In accordance with 20 CFR 404.985(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 93–2(2).

EFFECTIVE DATE: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On May 17, 1993, we published Acquiescence Ruling 93–2(2) to reflect the holding in *Conley* v. *Bowen,* 859 F.2d 261 (2d Cir. 1988), that 20 CFR 404.1592a does not apply to work activity performed by a disabled individual after a reentitlement period when determining whether that individual has engaged in substantial gainful activity. The court held that SSA must evaluate such work activity under 20 CFR 404.1571 through 404.1576, and consider an average of work and earnings performed over a period of months rather than work and earnings performed in a single month.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending section 404.1592a of Social Security Regulations No. 4 (20 CFR 404.1592a). These amendments will clarify that earnings averaging does apply to work and earnings performed during and after a reentitlement period when determining whether an individual's disability has ceased because of the performance of substantial gainful activity. However, we have also clarified this regulation to explain that, after an individual's disability has already been determined to have ceased, earnings averaging does not apply when determining whether an individual has engaged in substantial gainful activity for any month during or after a reentitlement period because of the performance of substantial gainful activity for purposes of determining whether benefits shall be paid for that month.

Because the changes in the regulations address the Conley court's concerns and explain specifically when the rules for averaging work and earnings over a period of months apply, we are rescinding Acquiescence Ruling 93–2(2). The final rules and this rescission restore uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through uniform national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners)

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–17139 Filed 7–10–00; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 87–4(8); Iamarino v. Heckler

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 87–4(8)—*Iamarino* v. *Heckler,* 795 F.2d 59 (8th Cir. 1986).

SUMMARY: In accordance with 20 CFR 404.985(e), 416.1485(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 87–4(8).

EFFECTIVE DATE: August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On August 31, 1987, we issued Acquiescence Ruling 87–4(8) to reflect the holding in *Iamarino* v. *Heckler,* 795 F.2d 59 (8th Cir. 1986), that 20 CFR 404.1574 and 416.974 provide a ''middle ground,'' where no positive or negative presumption of substantial gainful activity applies, for evaluating sheltered workshop earnings at the first step of the sequential evaluation process for determining disability. The court noted that because SSA's regulations for evaluating earnings from competitive employment (i.e., nonsheltered workshop earnings) provided a ''middle ground'' where no presumption applies, between the upper and lower earnings limits specified in the regulations, the same regulations must also provide a ''middle ground'' where no presumption applies for sheltered workshop earnings. Accordingly, the court found that sheltered workshop earnings that exceed the upper substantial gainful activity threshold amount in these regulations fall in a ''middle ground'' where no presumption applies that an individual is engaging in substantial gainful activity.

Concurrent with the rescission of this Ruling, we are publishing our final rules amending sections 404.1574 and 416.974 of Social Security Regulations Nos. 4 and 16 (20 CFR 404.1574 and 416.974) to clarify that the ''middle ground'' where no positive or negative presumption of substantial gainful activity applies because it lies below the upper threshold amount for substantial gainful activity in paragraphs 404.1574(b)(2) and 416.974(b)(2), and above the lower threshold amount in paragraphs 404.1574(b)(3) and 416.974(b)(2), relates only to earnings from competitive employment. We also have clarified these regulations to provide that sheltered workshop earnings that do not exceed the upper threshold amount listed in paragraphs 404.1574(b)(2) and 416.974(b)(2), are presumed not to be substantial gainful activity even when the earnings fall within the ''middle ground'' range for individuals engaged in competitive employment.

Because the changes in the regulations address the Iamarino court's concerns, and explain that sheltered workshop earnings that fall between the upper and lower earnings limits specified in the regulations (in the ''middle ground'' range) for individuals engaged in competitive employment are presumed not to be substantial gainful activity, we are rescinding Acquiescence Ruling 87–4(8). The final rules and this rescission restore uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–17140 Filed 7–10–00; 8:45 am]

BILLING CODE 4191–02–U

Federal Register

Tuesday,
July 11, 2000

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21 and 36

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. FAA–2000–7587; Notice No. 00–08]

RIN 2120–AH03

Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA is proposing changes to the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These proposed changes are based on the joint effort of the Federal Aviation Administration (FAA), the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for subsonic jet airplanes and subsonic transport category large airplanes. These proposed changes would provide nearly uniform noise certification standards for airplanes certificated in the United States and in the JAA countries. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

DATES: Comments must be received on or before October 10, 2000.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–7587 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments and you may review public dockets through the Internet at http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

FOR FURTHER INFORMATION CONTACT: James Skalecky, AEE–100, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3699; facsimile (202) 267–5594; or email at james.skalecky@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written comments, data, views, or arguments. Comments on the possible environmental, economic, and federalism or energy related impact of the adoption of this proposal are welcomed.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of comments if commenters include a self-addressed, stamped postcard with the comments. The postcards should be marked ''Comments to Docket No. FAA–2000–7587.'' When the comments are received by the FAA, the postcards will be dated, time stamped, and returned to the commenters.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Current Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribe ''standards to measure aircraft noise and sonic boom; . . . and regulations to control and abate aircraft noise and sonic boom.'' Part 36 of Title 14 of the Code of Federal Regulations (part 36) contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft. Subparts A, B and C and appendices A, B and C of part 36 contain the requirements and standards that apply to subsonic jet airplanes and subsonic transport category large airplanes. Appendices A, B and C of part 36 specify the test conditions, procedures, and noise levels necessary to demonstrate compliance.

Government and Industry Cooperation

In June 1990 at a meeting of the Joint Aviation Authorities (JAA) Council, which consists of JAA members from European countries and the FAA, the FAA Administrator committed the FAA to support the harmonization of the U.S. regulations with the Joint Aviation Regulations (JAR). The Joint Aviation Regulations are being developed for use by the European authorities that are member countries of the JAA.

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee to serve as a forum for the FAA to obtain input from outside the government on major regulatory issues facing the agency. The FAA has tasked ARAC with noise certification issues. These issues involve the harmonization of part 36 with JAR 36, the harmonization of associated guidance material including equivalent procedures, and interpretations of the regulations. On October 17, 1995, the ARAC established the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes (60 FR 53824). The working group task included reviewing the applicable provisions of subparts A, B, and C, and appendices A, B, and C of part 36, and harmonizing them with the corresponding applicable provisions

of JAR 36. The working group was asked to consider the current international standards and recommended practices, as issued under International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. A recommendation for amending part 36 was forwarded to the ARAC. After due consideration including a meeting open to the public on May 18, 2000, this recommendation agreed to by ARAC was forwarded, in the form of a draft NPRM, to the FAA for consideration.

Synopsis of the Proposal

Part 36 contains noise standards for aircraft type and airworthiness certification. Subparts A, B, and C, and the related appendices A, B, and C, of part 36 prescribe noise levels and test procedures for subsonic jet airplanes and subsonic transport category large airplanes, including rules governing the issuance of original, amended, or supplemental type certificates.

This notice of proposed rulemaking includes changes to part 36 in three major categories. First, there are substantive changes to technical material, such as proposing a revised method for demonstrating the lateral noise certification level for propeller-driven large airplanes. These changes are discussed individually in this preamble. Second, there are many proposed changes to regulatory text that would serve to minimize the language differences between part 36 and JAR 36, while having no substantive effect on the regulatory standards of part 36. These text changes are not specifically discussed in this preamble Third, there are numerous proposed changes to the section designations of current Appendices A, B, and C of part 36 that would more closely align part 36 and JAR 36 formats. Changes in this category would have no substantive effect on the regulatory standards of part 36. The changes in part 36 appendices designation are shown in a tabular format that identifies current part 36 appendices sections and the corresponding section of the proposed revision. This redesignation table appears at the end of the section-by-section discussion.

Section-by-Section Discussion

The following is a section-by-section discussion of the proposed amendments that will cover the substantive changes being proposed for the regulatory standards of part 36 and its appendices. Sections that are proposed for redesignation, but not substantively changed, will not be discussed, but will appear only in the redesignation table that follows the section-by-section discussion. Throughout the proposed amendment, the term ''jet'' has been used when referring to turbojet and turbofan engines. This would change the terminology in current part 36, which uses the term ''turbojet'' when referring to both turbojet and turbofan engines. This change would result in the same terminology usage by both part 36 and JAR 36, when referring to turbojet and turbofan engines.

Section 36.1

The FAA is proposing to remove § 36.1(d)(3). This section should have been removed by Amendment 36–10 (43 FR 28406, June 29, 1978), which redesignated § 36.1(d)(3) as § 36.1(d)(1)(iii).

In § 36.1(f)(1), the terms ''takeoff'' and ''sideline'' are proposed to be replaced with the terms ''flyover'' and ''lateral'', respectively. This change would harmonize the terminology based on the international standard.

Section 36.2

Section 36.2, ''Special retroactive requirements'' would be removed. Section 36.2 requires that the noise certification applicant show compliance to the part 36 amendment that is in effect on the date of certification. This requirement was included in part 36 when the FAA did not have the authority to prevent the issuance of a type certificate for an aircraft for which available and reasonable noise reduction design practices had not been incorporated. The FAA subsequently received this authority under the Noise Control Act of 1972; the retroactive requirement contained in § 36.2 is no longer necessary. This change would harmonize the applicability designation of part 36 with that contained in § 1.7 of ICAO annex 16, Chapter 1. In conjunction with the proposed removal of the special retroactive requirements of part 36 § 36.2, this notice proposes changes to §§ 21.17 and 21.101(a) of part 21 of this chapter to remove references to part 36 that are contained in these sections of part 21.

Section 36.6

The FAA proposes to add five specifications to the incorporated matter under § 36.6. These specifications are referred to under proposed section A36.3, which would update requirements for measurement and analysis systems to address the latest standards and equipment technology. Updated addresses for the International Electrotechnical Commission, American National Standards Institute, and FAA Regional Headquarters are also included in proposed § 36.6.

Sections 36.101 and 36.103

Two sections, 36.101, Noise measurement, and 36.103, Noise evaluation, would be replaced with a new § 36.101, Noise measurement and evaluation. The proposed § 36.101 reflects the proposal to combine the material contained in current Appendix A and Appendix B into proposed Appendix A. This proposed change would more closely align part 36 and JAR 36 formats without any substantive effect. Also for the purpose of aligning the formats of part 36 and JAR 36, the FAA proposes to redesignate § 36.201 as § 36.103. Current subpart C would be reserved.

Appendix A—Aircraft Noise Measurement and Evaluation Under § 36.101

The proposed Appendix A to part 36, Aircraft Noise Measurement and Evaluation under § 36.101, would replace current Appendix A, Aircraft Noise Measurement under § 36.101, and Appendix B, Aircraft Noise Evaluation under § 36.103. The harmonization objective is to develop seamless part 36 and JAR 36 regulations that reflect ICAO Annex 16 to the extent possible. The text of JAR 36, Appendix A, is essentially a copy of Annex 16, Appendix 2. The proposed Appendix A to part 36 was developed with the intent of maintaining a section format consistent with JAR 36, Appendix A and ICAO Annex 16, Appendix 2.

Appendix A36.1 Introduction

A new section A36.1.2 would be added to state that the noise certification instructions and procedures given are intended to ensure uniform results and to permit comparison between tests of various types of aircraft conducted in various geographical locations.

Appendix A36.2 Noise Certification Test and Measurement Conditions

Proposed section A36.2 would replace current section A36.1. This proposed section describes the conditions under which noise certification testing would be conducted and the measurement procedures that would be required.

Under the proposal, current section A36.5(e)(4), that addresses the use of equivalent procedures, would be deleted. The key requirement of the section, that equivalent procedures must be FAA-approved, is already addressed in the regulatory text of § 36.101. Additional information on the use of

equivalent procedures would be provided in the note contained in section A36.2.1.1. Therefore, section A36.5(e)(4) would be deleted since its content would be addressed in § 36.101.

A note in section A36.2.1.1 would reference the guidance material on the use of equivalent procedures contained in Advisory Circular 36–4C, ''Noise Standards: Aircraft Type and Airworthiness Certification''. Current AC36–4B, ''Noise Certification Handbook'', contains guidance material on the use of equivalent procedures. AC36–4B will be revised and significantly changed in format and content, and will be designated AC36–4C, ''Noise Standards: Aircraft Type and Airworthiness Certification.'' The FAA intends to issue the new AC36–4C concurrently with the final rule that results from this notice. The AC36–4C is referred to as ''the current Advisory Circular for this part'' throughout the proposed regulatory text in order to avoid the need for formal rulemaking any time the Advisory Circular is revised. Throughout this preamble, however, the Advisory Circular is referred to as Advisory Circular 36–4C.

Most of proposed section A36.2 is moved from sections A36.1, A36.5 and A36.9. Under the proposal, the material in current section A36.1(c)(1) would be moved to proposed section A36.2.2.2(a) and revised to remove the word ''rain'', since rain is included in the term ''precipitation.'' The material in section A36.1(c)(2) would be moved to proposed section A36.2.2.2(b) and the minimum test temperature limit decreased from 36 °F (2.2 °C) to 14 °F (−10 °C). The current 36 °F (2.2 °C) temperature limit is considered unnecessarily restrictive, given that no higher levels of atmospheric absorption, compared with those existing in the current test window, could be encountered by lowering the test day temperature. Under this revised minimum test temperature limit, testing would still be required to be conducted in conformance with the operational temperature limit for the noise measuring equipment being used.

Proposed section A36.2.2.2(c), does not contain the current section A36.1(c)(3) provision that permits expanded atmospheric attenuation rates when the dew point and dry bulb temperatures used for obtaining relative humidity are measured with a device which is accurate to within ±0.5 °C. This allowance for expanded atmospheric attenuation rates is already permitted as an equivalent procedure by AC36–4B, and will continue to be permitted as an equivalent procedure in the revision to AC36–4B (i.e., AC36–4C). The result would be no change in the allowance of expanded atmospheric attenuation rates. This change is proposed to meet the harmonization objective to more closely align part 36 and JAR 36 formats.

The requirement to obtain meteorological measurements within ''25 minutes'' of each noise test measurement as required in current section A36.9(b)(3) would be changed to ''30 minutes'' in proposed section A36.2.2.2(g). Thirty minutes is the established international standard in ICAO Annex 16. The FAA was unable to find a technical reason why the meteorological measurement time was originally set at 25 minutes. Based on technical and application considerations, an increment of 5 minutes does not constitute a substantive difference. No known technical criteria exist with which to assess this minimal time increment. This change is being proposed to achieve harmonization by adopting a single international standard.

Current section A36.9(d)(3) would be revised and moved to section A36.2.2.3. This amendment would change the method used to establish layer depth to a single international standard. Part 36 does not provide specific criteria for determining layer depth, except to require that it be no greater than 100 ft. The proposed criteria for determining layer depth is the same as that used to specify the onset of required layering, i.e. under weather conditions where the atmospheric attenuation rate changes by more than +/−1.6 dB/1000 ft (+/−0.5 dB/100m) over the sound propagation distance. Under this proposal, the minimum layer depth would be established as 100 feet (30 meters). Thus, the layer depth would be 100 feet (30 meters) in cases where the atmospheric rate change criteria would limit the layer depth to less than 100 feet (30 meters).

Section A36.3 Measurement of Aircraft Noise Received on the Ground

The proposed changes to this section are intended to update the requirements for measurement and analysis systems to address the latest standards and equipment technology. The changes were drafted by an international task group, that has years of knowledge and experience in the noise certification of airplanes, and was assembled to update the ICAO Annex 16 requirements for measurement and analysis systems. The proposed changes in section A36.3 incorporates the international task group's recommendations, which were agreed to by Working Group 1 of the ICAO Committee on Aviation Environmental Protection (ICAO/CAEP). Further, the proposed changes are intended to harmonize with the international standard, Annex 16. The primary purpose of this work was to address considerations related to the use of digital equipment. Many of these considerations are addressed in the International Electro-Technical Commission (IEC) Standard 61265 and IEC Standard 61260. Accordingly, much of the pertinent text from these standards has been included in the requirements developed by the international task group. These IEC standards also reflect general improvements to instrumentation technology that have occurred over the past decade, although they are not necessarily related to the advent of digital technology. In addition to improvements tied to the IEC standards, several changes that resulted from the work of the task group are linked to general advancements in noise measurement instrumentation overall.

Proposed section A36.3 includes the following specific changes to current section A36.3. Current section A36.3 does not include definitions. Section A36.3.1, Definitions, would be added to define the terms used in proposed section A36.3. Under the proposal, section A36.3.2, Reference environmental conditions, would be added for specifying the performance of a measurement system.

Section A36.3.3.2 would specify anti-alias requirements for measurement systems that include analog to digital signal conversion.

Proposed section A36.3.4.1 would add a requirement that windscreen insertion loss not exceed ±1.5 dB. In addition, proposed section A36.3.9.10 would specify allowable changes in windscreen insertion loss.

Proposed sections A36.3.5.3 and A36.3.5.4 would specify microphone sensitivity requirements only at the midband frequencies. This is a simplification of the current part 36 requirement contained in sections A36.3(c)(2)(ii) and A36.3(c)(2)(iii). Sections A36.3.5.3 and A36.3.5.4 would also specify more stringent tolerances on microphone sensitivity. Typical microphones that are currently used in part 36 noise certification testing comply with this more stringent microphone sensitivity requirement.

Proposed section A36.3.6.3 would add a tolerance for frequency response of the measurement system.

For analog tape, proposed section A36.3.6.4 would add a ±0.5 dB tolerance for amplitude fluctuations of a recorded 1 kHz signal.

Proposed section A36.3.6.5 would add a tolerance for amplitude linearity, at several specific frequencies, for the measurement system (exclusive of the microphone.)

Proposed section A36.3.6.6 would require that the electronic signal level corresponding to the calibration sound pressure level be from 5 dB to 30 dB less than the upper boundary of the measurement system level range. A similar requirement in current part 36, section A36.(c)(3)(i), is 10 dB.

Proposed section A36.3.6.8 would add a requirement for an overload indicator in the recording and reproducing system.

Proposed section A36.3.6.9 would allow for measurement system attenuators to operate in known intervals of decibel steps, rather than in equal interval steps, as in current part 36 section A36.3(b)(6).

Proposed section A36.3.7.2(e) would add a requirement that the analyzer operate in real time from 50 Hz through at least 12 kHz.

Proposed section A36.3.7.3 would specify IEC 61260 class 2 electrical performance requirements as the minimum standard for analyzers. This change updates the specifications for analyzers used in conjunction with part 36 noise certification. Proposed section A36.3.7.3 would also require that filter bandwidth adjustments be determined in accordance with IEC 61260. The IEC method requires that the adjustment be based on more frequencies than are required under current part 36.

Proposed section A36.3.7.4 would contain a correction to the slow time-weighting characteristics in current section A36.3(d)(5)(ii) and (iii). Section A36.3.7.6 would specify that the instant in time at which a slow time weighted sound pressure level is characterized should be 0.75 seconds earlier than the actual readout time. The current requirement specifies that the instant in time at which a readout is characterized must be the midpoint of the averaging period.

Proposed section A36.3.7.5 would specify a continuous exponential averaging process equation through which simulated slow weighted sound pressure levels can be obtained. Section A36.3.7.5 would also specify an equation that results in an approximation of continuous exponential averaging.

Section A36.3.7.7 would require that the analyzer resolution must be 0.1 dB or finer. The current requirement, in section A36.3(d)(7) specifies that the amplitude resolution of the analyzer must be at least ±0.25 dB.

Proposed section A36.3.9.1 would require that calibration adjustments be applied to the measured sound levels determined from the output of the analyzer; the current rule permits these calibrations to be applied within the analyzer. This change is necessary to enable the FAA to determine whether these calibration adjustments have been applied correctly.

Proposed section A36.3.9.3 would allow the free-field corrections based on grazing incidence to be applied when the sound incidence angle is within ±30 degrees of grazing incidence.

Proposed section A36.3.9.4 would require that at least 30 seconds of pink noise be recorded for analog tape recorders; the current section A36.3(e)(4)(ii) requirement is for at least 15 seconds of pink noise. This change would result in a more accurate pink noise correction and would harmonize with the international standard.

Proposed section A36.3.9.6 would require that attenuator accuracy be within 0.1 dB. Section A36.3(b)(6) currently requires that attenuator accuracy be within 0.2 dB. The proposed rule would require that calibration be checked within six months of each test series. The current rule does not specify a time period within which calibration must be checked.

Proposed sections A36.3.9.5 and A36.3.9.7 would change calibration requirements for the pink noise generator and sound calibrator to allow calibration to occur within six months preceding or succeeding the test instead of requiring it to be within the preceding six months as required by current section A36.3(e)(7).

Proposed section A36.3.9.7 would add a new calibration requirement that limits the change in output of the sound calibrator to not more than 0.2 dB, as compared to the previous calibration.

Proposed section A36.3.9.8 would allow for the use of sound calibrators other than pistonphones, as specified by current section A36.3(e)(4). Section A36.3.8.1 would specify the class 1L requirements of IEC 60942, entitled ''Electroacoustics—Sound calibrators'', as the minimum standard for the sound calibrator.

Proposed section A36.3.9.9 would add a requirement for the recording medium (*e.g.,* tape reel) to carry at least a 10-second sound pressure level calibration at its beginning and end. This proposed change would more precisely define the current section A36.3(e)(4) sound pressure level calibration requirement.

Section A36.4 Calculations of Effective Perceived Noise Level From Measured Data

To further harmonize the formats of part 36 and JAR 36, Table B–1, ''Perceived Noisiness (NOYs) as a Function of Sound Pressure Level'', referenced in current section B36.13(a) would be moved to AC36–4C. The noy values contained in Table B–1 can be calculated from the equations contained in proposed section A36.4.7.3.

A minor technical change is proposed for the Perceived Noise Level (PNL) equation in proposed section A36.4.2.1(c) (current section B36.3(c)). The more exact term 10/log 2 is replacing the rounded-off term (33.22). The difference between PNL values that are determined using the current and proposed equations is not expected to be significant.

To harmonize the formats of part 36 and JAR 36, Figure B1, ''Perceived noise level as a function of noys'', would be moved from current section B36.3(c) to AC36–4C. The perceived noise level values contained in Figure B1 can be calculated from the equations contained in proposed section A36.4.2.1(c).

Proposed section A36.4.5.2 would change the value of ''d'' from 1.0 seconds to 0.5 seconds to reflect current standard practice. Parallel changes are proposed for section A36.4.5.4 and section A36.6. This change is a text update to reflect the current practice of using 0.5 second data samples, and would have no substantive effect.

To harmonize the formats of part 36 and JAR 36, the material in section B36.5(m) addressing methods for removing the effects of tones resulting from ground plane reflections would be moved to AC36–4C.

The FAA is proposing the deletion of current section B36.9(e), which specifies the duration time interval when the value of PNLT(k) at the 10 dB-down points is 90 PNdB or less. This provision was eliminated for applications made after September 17, 1971 by Amendment 36–5 (41 FR 35053, August 19, 1976). The text permitting the use of this provision has erroneously remained in part 36.

In addition, current section B36.9(f) would also be deleted. The text contained in current section B36.9(f) was added to part 36 in Amendment 36–5 to distinguish between the procedure for determining duration for applications made before and after September 17, 1971. This distinction is no longer necessary if current section B36.9(e) is deleted as proposed.

Section A36.5 Data Reporting. Proposed section A36.5.2 would require

that the data specified under section A36.5.2 be reported to the FAA in the applicant's noise certification compliance report. While current part 36 does not specifically identify a requirement for the applicant to submit a noise certification compliance report, these reports represent the standard practice that is used by applicants for submitting this information to the FAA. Proposed section A36.5.2.5 would also identify the specific airplane configuration items and engine operating parameters that must be reported. Each of these configuration items and parameters can affect the airplane noise signature. The reporting requirement for these items and parameters already exist under current section A36.5 which specifies that the aircraft configuration and engine performance parameters relative to noise generation be reported. Further, these configuration items and parameters are also included in the international standard. Their addition to part 36 would promote harmonization.

Proposed section A36.5.2.5(c) would require that the test airplane's center of gravity be reported to the FAA. Airplane center of gravity is an example of an identifying characteristic of the airplane test configuration and an item that could influence measured noise levels. Proposed section A36.5.2.5(d) would require that airbrake and propeller pitch angle also be reported. Proposed sections A36.5.2.5(e), (f), and (j) would, respectively, require reporting of whether the auxiliary power unit (APU) is operating, the status of pneumatic engine bleeds and engine power take-offs, and non-standard airplane test configurations.

Proposed section A36.5.2.5(h)(2) would require reporting of engine performance parameters specifically related to propeller-driven large airplanes.

Current section A36.5(d)(3) does not permit an effective perceived noise level (EPNL) to be computed or reported from data that more than four one-third octave bands in any spectrum within the 10 dB-down points have been excluded from the EPNL computation. This section would be removed since correction (adjustment) methods for removing the effects of ambient noise from airplane noise data must be used in lieu of excluding one-third octave bands. Proposed section A36.3.9.12 specifies the ambient noise level limitations that would require corrections (adjustments) to be made, and also references AC36–4C, which contains an acceptable procedure for removing the affects of ambient noise.

Section A36.6 Nomenclature: Symbols and Units

Under the proposal, current section A36.7, Symbols and units, would be replaced by revised section A36.6, Nomenclature: Symbols and units. The proposed section would incorporate Annex 16 symbols and units, while retaining the English units. This change is proposed to more closely align part 36 with JAR 36. No substantive technical changes to the regulatory standards of part 36 are anticipated to result from incorporation of the Annex 16 symbols and units.

Section A36.7 Sound Attenuation in Air

Currently, atmospheric attenuation rates of sound with distance must be determined in accordance with Society of Automotive Engineers, Inc. (SAE), Aerospace Recommended Practice (ARP) 866A, (SAE ARP 866A) as specified in current section A36.9(c). Under the proposal, section A36.7.2 would contain the actual formulation (equations) from SAE ARP 866A. These equations are provided in both the International System of Units and the English System of Units. Whereas equations are continuous and provide consistent values, tables and graphs can provide minor differences. This proposed change would further harmonize part 36 and JAR 36 and is not expected to result in any substantive difference in attenuation rates.

Section A36.9 Adjustment of Airplane Flight Test Results

The current distinction between allowable/required positive and negative correction procedures contained in current sections A36.11(a)(1) and (2) are not included in proposed section A36.9.1. The distinction is no longer relevant, given the evolution of data correction procedures since part 36 was originally promulgated in 1969 and the need for noise certification levels to reflect airplane noise characteristics as accurately as possible. Prior to any noise certification compliance test, a noise certification applicant is required to identify and gain FAA approval of any planned or anticipated data correction that is not a mandatory correction procedure under part 36.

Under the proposal, current section A36.1(b)(3), which requires that the corrections prescribed in current section A36.5(d) be made when the height of the ground at a noise measuring station differs from that of the nearest point on the runway by more than 20 feet, would be deleted because it is obsolete. A 20-foot height allowance/tolerance could change the final EPNL value by several tenths of a dB under some circumstances. Under current practices, corrections (adjustments) are made over the sound propagation path from the microphone to airplane height as part of normal data corrections (adjustments). These corrections (adjustments) are specified in current section A36.11 and proposed section A36.9.

Proposed section A36.9.1.1(d) would require that the effect that airspeed has on source noise be considered with regard to the difference between test day airplane speed and the airplane reference flight profile speed. Thus, the proposed section would specify that, ''in addition to the effect on duration, the effects of airspeed on component noise sources must be accounted for as follows: For conventional airplane configurations, when differences between test and reference airspeeds exceed 15 knots (28 km/h) true airspeed, test data and/or analysis approved by the FAA must be used to quantify the effects of the airspeed adjustment on resulting certification noise levels.''

The symbols and figures used to describe the takeoff and approach profiles in current sections A36.11(b) and (c), would be replaced by the JAR 36 symbols and figures that have been incorporated into proposed section A36.9.2. There would be no substantive changes to the takeoff and approach profile technical requirements as a result of these changes.

Proposed section A36.9.3.2.1 provides equations that would enable data adjustments to be made using either the English System of Units or International System of Units.

The material in current section B36.11(c) would be moved to section A36.9.3.2.2 and revised to provide that the adjustment for multiple peak values of tone-corrected perceived noise level (PNLT) is based upon the difference in corrected PNLT values, rather than upon EPNL as in the current part 36. This change would more clearly define the intent of the multiple peak correction.

Under proposed section A36.9.3.3.2, a correction term to account for the difference between test and reference airplane airspeeds would be added to the duration correction ($\Delta 2$) contained in current section A36.11(e). The speed correction term would be defined as 10 log (V/V_r), where V is the airplane test speed and V_r is the airplane reference speed. This proposed change specifies the speed correction that is a requirement of current section A36.11(f)(1).

Appendix B—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

Proposed appendix B would include the material from current appendix C. The objective is to harmonize proposed appendix B, and JAR 36, Section 1, Subpart B. The proposed appendix B is essentially the same as JAR 36, section 1, subpart B.

Section B36.3 Reference Noise Measurement Points.

Under the proposal, the material in current section C36.3 would be moved to section B36.3 and revised as follows. The term ''takeoff'' in current section C36.3(a) would be replaced with the term ''flyover'' in proposed section B36.3(b).) The term ''sideline'' in current section C36.3(c) would be replaced with ''lateral'' in proposed section B36.3(a). These terminology changes would harmonize the part 36 terminology with that used in JAR 36 and Annex 16.

Proposed section B36.3(a)(2) includes a simplified test procedure that may be used in determining the sideline (lateral) noise level for propeller-driven large airplanes in demonstrating the sideline (lateral) noise certification level. This procedure is also contained in JAR 36 and ICAO Annex 16. For propeller-driven airplanes, it can be difficult to establish the maximum lateral noise level specified under current section C36.3C, because this noise level may occur at a very low height. There is usually a significant difference in noise levels between the port and starboard sides of a propeller-driven large airplane. By measuring full-power noise at a predetermined point (650meters) below the takeoff flight path, many of the difficulties which arise because of the directional nature of the noise from propeller-driven airplanes when measured at the conventional lateral site will be eliminated. Ground effects that distort measurements will also be reduced. Under the current requirement, it is difficult to judge the airplane altitude at which the peak noise level occurs, and in the past this has required applicants to conduct as many as 30 flight tests to satisfy certification authorities, an expensive process. Moreover, the current method for testing propeller-driven airplanes has generally resulted in low confidence in accuracy and repeatability of measurements. The simplified test procedure is proposed to be available as an alternative to the current section C36.3(c) method for tests conducted before March 20, 2002, after which it would become the sole method for demonstrating sideline (lateral) noise level compliance.

Current section C36.3(b) would be moved to section B36.3(c) and text would be added to define the approach measurement point relative to the runway threshold. This change would more clearly describe the geometric relationship between the test airplane and the ground, and would further harmonize part 36 and JAR 36.

Section B36.4 Test Noise Measurement Points

As proposed, most of the requirements of current section A36.1(b)(7) would be moved to proposed section B36.4(b). Current section A36.1(b)(7), allows (when approved) for the sideline (lateral) noise certification level demonstration for jet airplanes to be based on the assumption that the peak sideline (lateral) noise level occurs at an airplane altitude of 1,000 feet (1,440 feet for Stage 1 or Stage 2 four-engine airplanes). Under the proposed rulemaking, this procedure would be moved to the guidance material in AC 36–4C as an equivalent procedure for demonstrating the sideline (lateral) noise certification level. This change would further harmonize part 36 and JAR 36 and would have no substantive effect.

Proposed section B36.4(b) would require that, in demonstrating the sideline (lateral) noise certification level for propeller-driven airplanes, noise measurements be made at symmetrically located noise measurements points on either side of the runway for each and every noise measurement point along the main sideline (lateral) noise measurement line. This change is proposed because of the asymmetric nature of propeller noise. Because of the possibility of lateral noise asymmetry, part 36 has required simultaneous measurements at one test measurement point opposite the main lateral measurement line. In the case of propeller-driven airplanes, whose noise field is known to be asymmetrical, having only one measuring point opposite the main lateral measurement line is not adequate to define the peak lateral noise on the other side of the runway from the main lateral line. This change would further harmonize part 36 and JAR 36.

Section B36.5 Maximum Noise Levels

The material in current section C36.5 would be moved to proposed section B36.5 and revised to include minor format and language changes to harmonize with JAR 36. Amendment 36–15 (53 FR 16360, May 6, 1988) removed section C36.5(c); the reference to section C36.5(c) in current section C36.5(a) should have been removed under that amendment but it was not. The reference to section C36.5(c) is not included in this proposal.

In order to further harmonize part 36 and JAR 36, the term ''sideline'' has been changed to ''lateral'' in each place that it appears throughout section B36.5. This is a change in terminology that does not affect the noise measurement/analysis procedures or noise limits. Similarly, the term ''takeoff'' has been changed to ''flyover.'' No change in test procedures should be inferred from this change.

Section B36.6 Trade-Offs

The material in current section C36.5(b) would be moved to proposed section B36.6 and the reference to section 36.7(d)(3)(i)(B), in current section C36.5(b), would be changed to section 36.7(d)(1)(ii). This section reference should have been changed by Amendment 36–15 (53 FR 16360, May 6, 1988). This error is corrected by this proposed revision.

Section B36.7 Noise Certification Reference Procedures

The material addressing takeoff and approach reference and test limitations in current sections C36.7 and C36.9 would be moved to section B36.7, addressing takeoff and approach *reference* procedures, and section B36.8, addressing takeoff and approach *test* procedures. This material would also be revised as discussed in the following paragraphs.

Proposed section B36.7(b)(1) requires the use of ''average engine'' performance in defining the takeoff thrust for the reference takeoff procedures. This revision of current section C36.7(b)(2) would further harmonize the takeoff reference procedure, and would serve to eliminate confusion in compliance with the requirement. This change would also further standardize part 36 and JAR 36 regulations.

Proposed section B36.7(b)(1) would also specify ''Takeoff thrust/power'' as the maximum available for normal operations as scheduled in the performance section of the airplane flight manual for the reference atmospheric conditions given in proposed section B36.7(a)(5).

Currently section C36.7(b)(2) specifies different minimum cutback altitudes for jet powered and non-jet powered airplanes. Proposed section B36.7((b)(1)(ii) would contain the same minimum cutback altitude for all airplanes, the same altitude specified in current section C36.7(b)(2) for jet airplanes. Since the selection of the

minimum cutback altitude is determined by the minimum safe altitude for cutback initiation, there is no reason to distinguish between propeller-driven and jet airplanes. It is the FAA's understanding that this change would not have a substantive effect in practice, since cutback initiation heights greater than 1,500 feet are generally chosen for propeller-driven airplanes. Thus, the cutback initiation heights generally chosen are greater than both the current and proposed part 36 minimum cutback height requirements.

Under the proposal, the requirements of section A36.1(b)(2) is moved to section B36.7(b)(3) and revised to require that, for tests conducted after March 19, 2002, the lateral (sideline) noise level be demonstrated using full takeoff power throughout the takeoff flight path. Before that date, the lateral noise level may be demonstrated using the current section A36.1(b)(2) procedure, under which both the takeoff (flyover) and sideline (lateral) noise certification levels are determined using a single reference flight path that may include a thrust cutback. This change is proposed to reflect the intent of the international standard that the lateral measurement be based on the full-power condition. Since the revised lateral procedure might result in increased stringency, the use of this procedure would be optional for tests conducted before March 20, 2002. This change would mainly effect three and four engine airplanes.

The takeoff reference speed requirement specified in current section C36.7(e)(2) would be revised to be consistent with the takeoff reference speed contained in JAR 36 and Annex 16. The all-engine operating climb speed range (V2+10 to V2+20 kts) specified in proposed section B36.7(b)(4) represents the typical range of takeoff initial climb speeds seen in normal operation for most airplanes. For some airplanes, this proposed change to part 36 could result in an increase of up to 10 knots in the noise certification reference takeoff speed relative to the current part 36 reference takeoff speed requirements. For the affected airplanes, the increased takeoff speed could result in some noise level reduction at the sideline (lateral) noise measurement point with a resulting increase in noise level at the takeoff (flyover) noise measurement point. The FAA has found the change in takeoff reference speed to be acceptable because of this tradeoff of sideline (lateral) and takeoff (flyover) noise levels, although it might not be a one-to-one tradeoff.

Proposed section B36.7(b)(5) adds the meaning of configuration. This is not a change in requirement. Proposed section B36.7(b)(5) is intended to clarify the meaning and includes specific configuration elements, based on certification experience, that can have an effect on noise source.

Proposed section B36.7(b)(7) defines ''average engine'' as the average of all the certification compliant engines used during the airplane flight tests up to and during certification when operating within the limitations and according to the procedures given in the Flight Manual.

Under the proposal, current section C36.9(e)(1), reference approach speed, would be revised to incorporate the use of 1-g stall-based approach speeds by basing the approach noise certification reference speed on the reference landing speed (V_{REF}) that is used for the airworthiness certification. This proposal was included in Notice 95–17, published on January 18, 1996 (61 FR 1260), in which the FAA proposed to redefine the reference stall speeds for transport category airplanes as the 1-g stall speed instead of the minimum speed obtained in the stalling maneuver. Under Notice 95–17, a definition of V_{REF} would be included in 14 CFR part 1. Notice 95–17 has not been issued as a final rule. If a final rule based on Notice 95–17 is not issued before this notice becomes a final rule; the definition of V_{REF} (*i.e.,* the speed of the airplanes, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings) would be added to part 36. The proposed change to section C36.9(e)(1) would also be consistent with an anticipated change to ICAO/Annex 16 that is expected to be recommended by Working Group 1 of the ICAO Committee on Aviation Environmental Protection (CAEP) in conjunction with the current CAEP work program cycle. Under this proposed change, existing section C36.9(e)(1) would be redesignated as section B36.7(c)(2).

Current section C36.9(d) requires that all engines must operate at approximately the same power or thrust for approach tests conducted to demonstrate compliance with part 36. Under the proposal, this specific requirement would be removed, and instead, proposed section A36.9.3.4 would require that source noise adjustments be applied to account for any difference, between test and reference conditions, in engine parameters that affect engine noise (*e.g.,* corrected low pressure rotor speed). This proposed change would meet the intent of the current part 36 requirement and would also further harmonize with JAR 36.

Section B36.8—Test Procedures

The current section A36.1(d)(5) and A36.1(d)(7), limitations on the difference between the test weight and the maximum takeoff/approach weight for which noise certification is requested, would be replaced by the limitation in proposed section B36.8(d). The current section A36.1(d)(5) and A36.1(d)(7) limitations help insure the integrity of the final certification results by indirectly limiting the magnitude of the EPNL adjustments that may be applied to the test data in normalizing to the noise certification reference conditions. Proposed section B36.8(d) would directly limit the magnitude of the correction by specifying a limitation on the EPNL adjustment that can be made when correcting between test weight and maximum certification weight.

Under the proposal, current section A36.5(d)(5) would be revised and moved to section B36.8(f). The amounts of adjustment permitted when equivalent test procedures are different from the reference procedures remain unchanged, except that the amended requirements do not specify that tradeoffs are permitted when comparing adjusted levels against the appendix C noise levels, for the purpose of determining adjustment limits. Several interpretations of the current section A36.5(d)(5) requirement are possible as to whether the proposal represents a more stringent or less stringent adjustment limitation as compared with the current limitation. The FAA believes that the proposed change to remove the tradeoff provision from the current limitation and base the proposed limitation solely on the difference between the adjusted noise levels and the maximum noise levels in proposed B36.5 meets the intent of the adjustment limitation, as stated above, and clarifies ambiguity in its interpretation. The proposed change would also result in harmonization of the adjustment limitation with that in JAR 36 and ICAO Annex 16.

Proposed section B36.8(g) would revise the test speed tolerance specified in current sections C36.7(e)(1) and C36.9(e)(3). Current section C36.7(e)(1) specifies that takeoff tests must be conducted at the test day speeds ±3 knots. Current section C36.9(e)(3) specifies that a tolerance of ±3 knots may be used throughout the approach noise testing. Proposed section B36.8(g) would specify that during takeoff,

lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within +/−3% of the average airspeed between the 10dB-down points. Under the proposal, the instantaneous indicated airspeed is determined by the pilot's airspeed indicator. However, if the instantaneous indicated airspeed exceeds +/−3 kt (+/−5.5 km/h) of the average airspeed over the 10dB-down points, and is determined by the FAA representative on the flight deck to be due to atmospheric turbulence, then the flight so affected must be rejected for noise certification purposes.

Appendix G Noise Requirements for Propeller-Driven Small Airplanes and Commuter Category Airplanes Under Subpart F

Current Section G36.105(f)

The proposal would change the designation of the reference to current part 36 section A36.3(e) to A36.3.8 and A36.3.9 to maintain the correct cross-reference.

Appendix H Noise Requirements for Helicopters Under Subpart H

Current Section H36.111(c)(3)

The proposal would change the designation of the reference to current part 36 section A36.3(f)(3) to A36.3.9.11 to maintain the correct cross-reference.

Current section H36.201

The proposal would change the designation of the reference to current part 36 section B36.5(a) to A36.4.3.1(a) to maintain the correct cross-reference.

Redesignation Table for Proposed Appendices A and B

CROSS REFERENCE TABLE

Old Section	New Section
A36.1	A36.1, A36.2
A36.1(a)	A36.1.1, A36.2.1.1
A36.1(b)	A36.2.2
A36.1(b)(1)	A36.2.3.2, B36.3
A36.1(b)(2)	B36.7(b)(1)(iii)
A36.1(b)(3)	Deleted
A36.1(b)(4)	A36.2.2.1
A36.1(b)(5)	A36.2.2.4
A36.1(b)(6)	A36.2.2.1
A36.1(b)(7)	A36.9.3.5, A36.9.3.5.1, B36.4(b)
A36.1(c)	A36.2.2.2
A36.1(c)(1)	A36.2.2.2(a)
A36.1(c)(2)	A36.2.2.2(b)
A36.1(c)(3)	A36.2.2.2(c) AC36–4C
A36.1(c)(4)	A36.2.2.2(e)
A36.1(c)(5)	A36.2.2.2(f)
A36.1(d)(1)	B36.8(b), B36.2
A36.1(d)(2)	A36.2.3.1
A36.1(d)(3)	A36.2.3.2, A36.2.3.3
A36.1(d)(4)	B36.7(b), B36.8
A36.1(d)(5)	B36.8(d)
A36.1(d)(6)	B36.7(c), B36.8(e)
A36.1(d)(7)	B36.8(d)
A36.1(d)(8)	A36.2.3.3
A36.3	A36.3
A36.3(a)	A36.3.3
A36.3(b)	A36.3.3.1
A36.3(c)(2)(i-iv), A36.3(f)(1)	A36.3.5

CROSS REFERENCE TABLE—Continued

Old Section	New Section
A36.3(c)(2)(v)	A36.3.4
A36.3(c)(3)	A36.3.6
A36.3(d)	A36.3.7
A36.3(e)(1–6), A36.3(f)(2)	A36.3.9
A36.3(f)(2–4)	A36.3.9.11
A36.3(e)(7)	A36.3.8
A36.5(a)	A36.5.1.1, A36.5.1.2, A36.5.1.3
A36.5(b)(1)	A36.5.2.1
A36.5(b)(2)	A36.5.2.2
A36.5(b)(3)	A36.5.2.3
A36.5(b)(4)	A36.5.2.4
A36.5(b)(5)(i-vi)	A36.5.2.5
A36.5(b)(vii)	A36.5.2.5(i)
A36.5(b)(6)	A36.2.3.2, A36.2.3.3 A36.5.2.5(i)
A36.5(c)	A36.5.3
A36.5(c)(1)	B36.7(a)(5)
A36.5(c)(2)	B36.3(c), B36.7(b)(1)(vi), B36.7(c)(1)(i), B36.7(c)(1)(iv)
A36.5(d)(1)	A36.5.3.1, A36.9, B36.8(c)
A36.5(d)(2)	A36.9.1
A36.5(d)(2)(i)-(iv)	B36.8(d)
A36.5(d)(3)	A36.3.9.12
A36.5(d)(4)	A36.3.9.12
A36.5(d)(5)	B36.8(f)
A36.5(e)(1)	A36.5.4.1
A36.5(e)(2)	A36.5.4.2
A36.5(e)(3)	A36.5.4.3
A36.5(e)(4)	Deleted
A36.7	A36.6, A36.9.5, A36.9.6
A36.9(a)	A36.9.1.1
A36.9(b)(1)	A36.2.2.4
A36.9(b)(2)	A36.2.2.2(b)
A36.9(b)(3)	A36.2.2.2(g)
A36.9(c)	A36.7
A36.9(d)(1)	A36.9.1, A36.9.1.1
A36.9(d)(2)	A36.2.2.2(d)
A36.9(d)(3)	A36.2.2.3
A36.11(a)	A36.9.1
A36.11(a)(1)	Deleted
A36.11(a)(2)	Deleted
A36.11(a)(3)(i)	A36.9.1, B36.7
A36.11(a)(3)(ii)	A36.9.1.1
A36.11(a)(3)(iii)	A36.9.1.1
A36.11(a)(3)(iv)	A36.9.1.1, A36.9.3.4
A36.11(a)(3)(v)	A36.9.1
A36.11(b)(1)(i-ii)	A36.9.2.1(c)
A36.11(b)(2)	A36.9.3.1, A36.9.4.1
A36.11(b)(3)	A36.9.3.2(a)
A36.11(c)	A36.9.2.2
A36.11(c)(1)	A36.9.3.2(a-c)
A36.11(c)(2)	A36.9.3.2(a)
A36.11(d)(1–3)	A36.9.3, A36.9.3.1, A36.9.3.2.1, A36.9.3.2.1.1, A36.9.3.2.1.2
A36.11(e)(1–2)	A36.9.3.3.1, A36.9.3.3.2
A36.11(f)	B36.4(a), AC36–4C
A36.11(f)(1)	A36.9.1.2
A36.11(f)(2)	A36.9.1.2
A36.11(f)(2)(i-ii)	A36.9.4
B36.1	A36.1, A36.1.1, A36.4.1.3
B36.1(a)	B36.4.1.3(a)
B36.1(b)	A36.4.1.3(b)
B36.1(c)	A36.4.1.3(c)
B36.1(d)	A36.4.1.3(d)
B36.1(e)	A36.4.1.3(e)
B36.3	A36.4.2.1
B36.3(a)	A36.4.2.1, Step 1
B36.3(b)	A36.4.2.1, Step 2
B36.3(c)	A36.4.2.1, Step 3, AC 36–4B
B36.5	A36.4.3.1
B36.5(a)	A36.4.3.1, Step 1
B36.5(b)	A36.4.3.1, Step 2
B36.5(c)	A36.4.3.1, Step 3
B36.5(d)	A36.4.3.1, Step 4
B36.5(e)	A36.4.3.1, Step 5
B36.5(f)	A36.4.3.1, Step 6
B36.5(g)	A36.4.3.1, Step 7
B36.5(h)	A36.4.3.1, Step 8
B36.5(i)	A36.4.3.1, Step 9
B36.5(j)	A36.4.3.1, Step 10
B36.5(k)	A36.4.3.1, Step 10
B36.5(l)	A36.4.3.1, Step 10
B36.5(m)	A36.4.3.1, Step 10 Note, AC36–4C
B36.5(n)	A36.4.4.2

CROSS REFERENCE TABLE—Continued

Old Section	New Section
B36.7	A36.4.4
B36.7(a)	A36.4.4.1, A36.4.4.1 Note 1
B36.7(b)	A36.4.4.1-Note 2
B36.9	A36.4.5.1
B36.9(a)	A36.4.5.2
B36.9(b)	A36.4.5.3
B36.9(c)	A36.4.5.4
B36.9(d)	A36.4.5.5
B36.9(e)	Deleted
B36.9(f)	Deleted
B36.11(a)	A36.4.6.1
B36.11(b)	Deleted
B36.11(c)	A36.9.3.2.2
B36.13(a)	A36.4.7.1, Table A1 moved to AC 36–4C
B36.13(a)(1),(2),(3)	A36.4.7.2(a-c)
B36.13(b)	A36.4.7.3
B36.13(c)	A36.4.7.4
C36.1	B36.1
C36.3(a)	B36.3(b)
C36.3(b)	B36.3(c)
C36.3(c)	B36.3(a)
C36.5(a)	B36.5
C36.5(a)(1)	B36.5(a)
C36.5(a)(2)	B36.5(b)
C36.5(a)(2)(i)	B36.5(b)(1)
C36.5(a)(2)(ii)	B36.5(b)(2)
C36.5(a)(3)	B36.5(c)
C36.5(a)(3)(i)(A)	B36.5(c)(1)(i)
C36.5(a)(3)(i)(B)	B36.5(c)(1)(ii)
C36.5(a)(3)(i)(C)	B36.5(c)(1)(iii)
C36.5(a)(3)(ii)	B36.5(c)(2)
C36.5(a)(3)(iii)	B36.5(c)(3)
C36.5(b)(1)	B36.6
C36.5(b)(2)	B36.6
C36.5(b)(3)	B36.6
C36.7(a)	B36.7(a)(3)
C36.7(b)	B36.7(b)(1)(i)
C36.7(b)(1)	B36.7(b)(1)(i)
C36.7(b)(1)(i)	B36.7(b)(1)(i)
C36.7(b)(1)(ii)	B36.7(b)(1)(i)
C36.7(b)(2)(i)	B36.7(b)(1)(i)
C36.7(b)(2)(ii)	B36.7(b)(1)(i)
C36.7(b)(2)(iii)	B36.7(b)(1)(i)
C36.7(b)(2)(iv)	B36.7(b)(1)(i)
C36.7(c)	B36.7(b)(1)(ii)
C36.7(d)	B36.7(b)(1)(v)
C36.7(e)(1)	B36.7(b)(1)(iv)
C36.7(e)(1) Next to last sentence.	B36.8(g)
C36.7(e)(2)	B36.7(b)(1)(iv)
C36.7(e)(3)	B36.7(a)(5), A36.9.1
C36.9(a)	B36.7(a)(3), B36.7(c)(1)
C36.9(b)	B36.7(c)(1)(iii) & B36.7(c)(1)(v)
C36.9(c)	B36.7(c)(1)(i), B36.7(c)(iii)
C36.9(d)	Deleted
C36.9(e)(1)	B36.7(c)(1)(ii)
C36.9(e)(2)	B36.7(c)(1)(ii)
C36.9(e)(3)	B36.8(g)

CROSS REFERENCE TABLE

New Section	Old Section
A36.1	A36.1, B36.1
A36.1.1	A36.1(a), B36.1
A36.1.2	New section
A36.1.3	New section
A36.2	A36.1
A36.2.1	A36.1(a)
A36.2.1.1	A36.1(a)
A36.2.2	A36.1(b)
A36.2.2.1	A36.1(b)(4), A36.1(b)(6)
A36.2.2.2	A36.1(c)
A36.2.2.2(a)	A36.1(c)(1)
A36.2.2.2(b)	A36.1(c)(2), A36.9(b)(2)
B36.2.2.2(c)	A36.1(c)(3)
B36.2.2.2(d)	A36.9(d)(2)
A36.2.2.2(e)	A36.1(c)(4)
A36.2.2.2(f)	A36.1(c)(5)
A36.2.2.2(g)	A36.9(b)(3)
A36.2.2.3	A36.9(d)(3)
A36.2.2.4	A36.1(b)(5), A36.9(b)(1)
A36.2.3	A36.1(d)
A36.2.3.1	A36.1(d)(2)
A36.2.3.2	A36.1(b)(1), A36.1(d)(3), A36.5(b)(6)
A36.2.3.3	A36.1(d)(8), A36.5(b)(6)
A36.3	A36.3

CROSS REFERENCE TABLE—Continued

New Section	Old Section
A36.3.1	New
A36.3.2	New
A36.3.3	A36.3(a)
A36.3.3.1	A36.3(b)
A36.3.3.2	New
A36.3.4	A36.3(c)(2)(v)
A36.3.5	A36.3(c)(2)(i-iv), A36.3(f)(1)
A36.3.6	A36.3(c)(3)
A36.3.7	A36.3(d)
A36.3.8	A36.3(e)(7)
A36.3.9	A36.3(e)(1–6), A36.3(f)(2)
A36.3.9.11	A36.3(f)(2–4)
A36.3.9.12	A36.5(d)(3–4)
A36.4	B36.1
A36.4.1	B36.1
A36.4.1.1	B36.1
A36.4.1.2	B36.1
A36.4.1.3	B36.1
A36.4.2	B36.3
A36.4.2.1	B36.3; AC 36–4C
A36.4.3	B36.5
A36.4.3.1	B36.5(a-m)
A36.4.3.2	B36.5(n)
A36.4.4	B36.7
A36.4.4.1	B36.7(a) & (b)
A36.4.4.2	B36.5(n)
A36.4.5	B36.9
A36.4.5.1	B36.9
A36.4.5.2	B36.9(a)
A36.4.5.3	B36.9(b)
A36.4.5.4	B36.9(c)
A36.4.5.5	B36.9(d)
A36.4.6	B36.11
A36.4.6.1	B36.11(a)
A36.4.7	B36.13
A36.4.7.1	B36.13(a)
A36.4.7.2	B36.13(a)(1–3)
A36.4.7.3	B36.13(b)
A36.4.7.4	B36.13(c)
A36.5	A36.5
A36.5.1	A36.5(a)
A36.5.1.1	A36.5(a)
A36.5.1.2	A36.5(a)
A36.5.1.3	A36.5(a)
A36.5.2	A36.5(b)
A36.5.2.1	A36.5(b)(1)
A36.5.2.2	A36.5(b)(2)
A36.5.2.3	A36.5(b)(3)
A36.5.2.4	A36.5(b)(4)
A36.5.2.5	A36.5(b)(5)
A36.5.3	A36.5(c)
A36.5.3.1	A36.5(d)(1)
A36.5.4	A36.5(e)
A36.5.4.1	A36.5(e)(1)
A36.5.4.2	A36.5(e)(2)
A36.5.4.3	A36.5(e)(3)
A36.6	A36.7
A36.7.1–A36.7.3	A36.9(c)
A36.8	New section—Reserved
A36.9	A36.5(d)(1), A36.11
A36.9.1	A36.5(d)(2), A36.9(d)(1), A36.11(a), A36.11(a)(3)(i) & (v)
A36.9.1.1	A36.9(a), A36.9(d)(1), A36.11(a)(3)(ii-iii), A36.11(a)(3)(iv)
A36.9.1.2	A36.11(f)(1–2)
A36.9.2	A36.11(b)&(c)
A36.9.2.1	A36.11(b)(1)(i-ii)
A36.9.2.2	A36.11(c)
A36.9.3	A36.11
A36.9.3.1	A36.11(a), A36.11(f)(1)
A36.9.3.2(a)	A36.11(b)(3), A36.11(c)(2)
A36.9.3.2(b)	New section
A36.9.3.2.1	A36.9(d)(1–3)
A36.9.3.2.1.1	A36.11(d)(1)(ii)
A36.9.3.2.1.2	A36.11(d)(1)(ii)
A36.9.3.2.2	B36.11(c)
A36.9.3.3	A36.11(e)
A36.9.3.3.1	A36.11(e)(1)(2)
A36.9.3.3.2	A36.11(e)
A36.9.3.4	A36.11(a)(3)(iv)
A36.9.3.4.1	A36.11(a)(3)(iv)
A36.9.3.4.2	A36.11(a)(3)(iv)
A36.9.3.5	A36.1(b)(7)
A36.9.3.5.1	A36.1(b)(7)
A36.9.4	A36.11(f)(2)(i-ii)
A36.9.4.1	A36.11(b)(2), A36.11(f)(2)(i-ii)
A36.9.4.2	A36.11(f)(2)(i-ii)
A36.9.4.2.2	A36.11(f)(2)(i-ii)

CROSS REFERENCE TABLE—Continued

New Section	Old Section
A36.9.4.2.3	A36.11(f)(2)(i-ii)
A36.9.4.3	A36.11(f)(2)(i-ii)
A36.9.4.4	A36.11(f)(2)(i-ii)
A36.9.4.4.1	A36.11(f)(2)(i-ii)
A36.9.5	A36.7
A36.9.6	A36.7
B36.1	C36.1
B36.2	A36.1(d)(1)
B36.3(a)	C36.3(c)
B36.3(b)	C36.3(a)
B36.3(c)	A36.5(c)(2), C36.3(b)
B36.4(a)	A36.11(f)
B36.4(b)	A36.1(b)(7)
B36.5	C36.5(a)
B36.5(a)	C36.5(a)(1)
B36.5(b)	C36.5(a)(2)
B36.5(b)(1)	C36.5(a)(2)(i)
B36.5(b)(2)	C36.5(a)(2)(ii)
B36.5(c)	C36.5(a)(3)
B36.5(c)(1)(i)	C36.5(a)(3)(i)(A)
B36.5(c)(1)(ii)	C36.5(a)(3)(i)(B)
B36.5(c)(1)(iii)	C36.5(a)(3)(i)(C)
B36.5(c)(2)	C36.5(a)(3)(ii)
B36.5(c)(3)	C36.5(a)(3)(iii)
B36.6	C36.5(b)(1)-(3)
B36.7(a)(1)	
B36.7(a)(2)	A36.11(a)(3)(i)
B36.7(a)(3)	C36.7(a), C36.9(a)
B36.7(a)(4)	New section—Reserved
B36.7(a)(5)	A36.5(c)(1), C36.7(e)(3)
B36.7(b)(1)	C36.7(b), C36.7(b)(2)
B36.7(b)(2)	C36.7(c)
B36.7(b)(3)	A36.1(b)(2)
B36.7(b)(4)	C36.7(e)(1–2)
B36.7(b)(5)	C36.7(d)
B36.7(b)(6)	A36.5(c)(2)
B36.7(b)(7)	New section
B36.7(c)	C36.9
B36.7(c)	C36.9(a)
B36.7(c)(1)	A36.5(c)(2), C36.9(c)
B36.7(c)(2)	C36.9(e)(1), C36.9(e)(2)
B36.7(c)(3)	C36.9(b-c)
B36.7(c)(4)	A36.5(c)(2)
B36.7(c)(5)	C36.9(b)
B36.8(a)	New section
B36.8(b)	A36.1(d)(1)
B36.8(c)	A36.5(d), A36.11(a)
B36.8(d)	A36.1(d)(5–7)
B36.8(e)	A36.1(d)(6)
B36.8(f)	A36.5(d)(5)
B36.8(g)	C36.7(e)(1), C36.9(e)(3)

Paperwork Reduction Act

In this NPRM, Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes, Part 36, proposed §§ A36.5.2 and A36.5.2.5 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

The information to be collected is needed for the applicant's noise compliance report that is required by the Aircraft Noise Abatement Act of 1968. This statute authorized FAA to prescribe standards for the measurement of aircraft noise and to prescribe regulations providing for the control and abatement of aircraft noise. The noise compliance report information is part of the aircraft certification test. The collected information is incorporated into the noise compliance report that is provided to and approved by the FAA. The annual burden for § A36.5.2 is estimated to range from $80 × 80 hours at $6,400 per noise certification project to $100 × 160 hours at $16,000 per noise certification project. The annual burden for § A36.5.2.5 is estimated to range from $500 (5 hours × $100 per hour) to $2,000 (25 hours × $80 per hour) per certification. If proprietary information is submitted, it will be protected in accordance with appropriate laws.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary; (2) evaluate the accuracy of the agency's estimate of the burden; (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 (for example, permitting electronic submission of responses).

Individuals and organizations may submit comments on the information collection requirement by September 11, 2000 and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), 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 Office of Management and Budget (OMB) control number. The public will be notified of the OMB control number when it is assigned.

Compatibility With ICAO Standards

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. If this proposal is adopted, the FAA intends to file these differences with ICAO.

Wind Speed. Section A36.2.2.2(e) of the proposal requires that tests be carried out under atmospheric conditions where the average wind velocity 10 meters above ground does not exceed 12 knots and the crosswind velocity for the airplane does not exceed 7 knots. Section A36.2.2.2(e) of the proposal also specifies that maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10

knots during the 10 dB down time interval. Section 2.2.2(e) of ICAO Annex 16, Appendix 2 contains a similar average wind speed limitation, but specifies a maximum windspeed limitation only in cases where an anemometer with a built-in detector time constant of less than 30 seconds is used. The FAA does not agree to adopt this Annex 16 provision because it could result in tests being conducted in windspeed conditions that exceed those currently permitted under part 36; the effect of these higher wind conditions might have on the resulting noise levels could not be determined based on the information that was available to the harmonization working group.

Adjustments to PNL and PNLT. In adjusting measured sound pressure level data to reference conditions, section 9.3.2.1 of Annex 16 Appendix 2 requires that when a sound pressure level value is equal to zero (for example, as a result of applying a background noise correction) the adjusted sound pressure level must be kept equal to zero in the adjustment process. The FAA did not agree to adopt this provision. The FAA's view is that the sound pressure level values should be carried through the adjustment process regardless of whether they are greater than zero, equal to zero, or less than zero. It is entirely possible for a negative or zero sound pressure level value that results from the background noise correction process to become positive when adjustments are applied to account for the difference between the test and reference airplane heights above the noise measurement point.

Design characteristics that require different reference procedures. Section 3.6.1.4 of ICAO Annex 16, Appendix 2 permits the certificating authority to approve reference procedures that depart from those contained in section 3.6.2 and 3.6.3 of Annex 16 Appendix 2 when design characteristics of an airplane would prevent flight from being conducted in accordance with the 3.6.2 and 3.6.3 reference procedures. FAA did not agree to adopt this provision since it views the need to depart from the specified reference procedures due to airplane design characteristics as an indication that part 36 may not be appropriate for a given airplane. In this case, under U.S. procedures, the exemption or rulemaking processes, which include a public comment period would be followed to develop an appropriate noise certification basis.

Noise Certificates. Section 1.2 of ICAO Annex 16, Chapter 1 specifies that the documents attesting noise certification may take the form of a separate Noise Certificate or a suitable statement contained in another document approved by the State of Registry and required by that State to be carried in the aircraft. However, under 49 U.S.C. 44702, the FAA is not authorized to issue Noise Certificates. Section 36.1581 of part 36 requires that the certificated noise levels be included in the Airplane Flight Manual. However, the FAA does not require the Airplane Flight Manual to be carried in the airplane. An operations manual that does not contain certificated noise levels is carried in some airplanes. The FAA is aware of a number of cases in which airplane operators had difficulty in substantiating airplane noise compliance status to the satisfaction of airport authorities. The FAA invites comments on the extent of any problems encountered due to the absence of noise compliance substantiation when the Airplane Flight Manual is not on board the airplane.

Economic Evaluation

Proposed changes to Federal regulations undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined that this rule (1) has benefits which do justify its cost, is not a ''significant regulatory action'' as defined in the Executive Order and the Department of Transportation's (DOT) Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or the private sector. These analyses, available in the docket, are summarized below.

Costs

Many of the changes in the proposed rule are either editorial or procedural in nature. These types of proposed revisions would not add any new requirements or impose costs. However, 38 sections of the proposed changes to part 36 entail changes, which warranted further evaluation to determine whether they involve changes in criteria or could impose additional costs. The key factor in evaluating the proposed changes in criteria was assessing whether an applicant could pass the noise certification test under the proposed change but fail the test under the current rule or vice versa, indicating a change in the stringency of the existing standard.

Eight sections that would be removed by the proposed rule warranted further evaluation. These include sections that had previously been eliminated by an earlier amendment but the text had erroneously remained in part 36, as well as sections that are no longer relevant given improvements in test equipment and the enhancement of data correction procedures since the time part 36 was originally promulgated. The deletion of these sections has no cost impact.

The FAA evaluated the remaining items to determine whether costs would be incurred and examined the magnitude of the cost. The sections of the proposed rule with potential cost fall into four categories: (1) Software costs, (2) additional testing procedures, (3) additional or new measuring provisions, and (4) additional reporting requirements.

Software Costs—Five proposed provisions address the maintenance of the computer programs used to correct as-measured noise certification data to 14 CFR part 36 reference conditions. Such maintenance often times involves administrative cost. However, based on discussions with staff at the Volpe National Transportation Center, which work under contract to the FAA and evaluate certification software, the FAA has determined that four of these proposed changes would have no cost impact. The fifth, Section A36.3.7.6, would deal with technical differences in the ''readout'' time of the time-weighted measurement of the sound pressure level between the test data and the reference data. Implementation of this change would require modifying the computer software used by the applicants. The estimated times required for each applicant to

implement the software change and for the FAA to verify correct implementation the change are 40 and 20 hours, respectively at hourly wage rates of $85 and $75, respectively. The FAA estimates that 39 applicants would incur this one-time cost, and that these software costs would be incurred in the first 3 years after the proposed rule's implementation. The total cost to industry and the FAA are $132,600 and $58,500 ($116,000 and $51,200 discounted), respectively.

Testing Costs—Three proposed changes relate to the operating specifications of test aircraft, but none have any cost impacts.

Measurement Costs—The FAA has determined that of the ten proposed changes that could affect the allowable test conditions and correction of test results to reference conditions, only one would have a cost impact. Under the proposed changes to Appendix B36.4(b), a special requirement would be added for propeller-driven airplanes that would require the placement of symmetrical positioned microphones at each and every test measurement point. However, most applicants already take advantage of FAA-approved equivalent test procedures that require only one set of symmetrical microphones for sideline noise measurements. Changing part 36 would not result in increased costs for most applicants. However, an applicant choosing to use multiple pairs of microphones could incur additional costs ranging up to an estimated $28,000 per test. These costs would involve an increase in the number of microphone systems, including cable, calibration, site surveys, and data recording, analysis and reporting. The FAA has calculated costs assuming that two domestic large-propeller applicants would conduct 4 tests meeting this requirement over the next 10 years. The total cost would be $112,000, or $79,200, discounted.

Reporting Costs—Section A36.5.2 would require applicants to include test results in their noise certification compliance report. While part 36 currently does not specifically require applicants to submit a compliance report it is a standard practice for applicants to do so, since applicants already address these data elements under JAR 36 or ICAO Annex 16. The addition of this provision would codify industry practice. Since the information is already provided, the FAA does not believe there will be additional costs to comply with this requirement. The FAA requests comments on this assumption and requests that all comments be accompanied by clear documentation supporting any proposed changes.

The FAA has determined that one proposed change, to section A36.5.2.3, would add new data elements to the required test report. There would be five new elements. All of these are test airplane operating configuration items that could effect the airplanes noise signature and are already a part of the international standard. Additional labor costs for documenting data not previously reported are estimated to range from $500 (5 hours × $100 per hour) to $2,000 (25 hours × $80 per hour) per test. These estimates are based on the number of additional items to be reported and on the assumption of a lower and upper range of required labor hour increases of 5 to 8 hours and 20 to 25 hours, respectively, at hourly labor rates that range from $80 to $100 per hour.

Based on FAA estimates, 14 noise certification projects involving flight tests are undertaken each year. Four of these projects are conducted among the 15 foreign firms which already comply with these proposed reporting requirements under JAR 36 or ICAO Annex 16 and thus would not incur additional reporting costs. Ten projects are conducted from among 24 domestic firms engaged in flight-testing and the FAA estimates that these firms would conduct 100 tests over the next 10 years. The FAA further estimates that some domestic firms will incur additional reporting costs of $1,250 per test based on the midpoint of the estimated additional labor costs. Domestic firms with a large international presence are estimated to conduct 40 of the 100 tests to be conducted over the next 10 years, based on the composition of the industry. Since these larger firms already frequently comply with the existing international reporting standard, the FAA estimates that only 10 of the 40 tests to be conducted by these firms would incur the additional reporting costs of $1,250 each, or a total of $12,500. The FAA estimates that of the 60 tests to be conducted by smaller domestic firms 24 tests would incur the additional reporting costs of $1,250 per test or a total of $30,000 over the next 10 years. Thus, the additional labor costs for reporting the additional information would total $42,500 ($30,000 plus $12,500) for these affected firms.

However, it is possible that some applicants might accrue additional costs. If an applicant was required to invest in new instrumentation or data recording equipment to comply with these requirements, the estimated total reporting costs could increase to between $5,000 and $10,000 per test. This is based on a range of estimates and scenarios involving purchasing and installing additional instrumentation, and labor for adding recording capability, data analysis, etc. For example, one possible scenario would entail the purchase and installation of instrumentation hardware at $4,200 ($2,500 for hardware and $1,700 for labor [20 hours × $85 per hour]), plus the labor cost for adding recording capability and data recording/analysis at $3,400 (40 hours × $85 per hour) for a total of $7,600 of additional cost. The FAA estimates that only three firms would incur this additional cost of $7,600 per test and that these firms would conduct a total of 12 tests over the next 10 years at a total cost of $91,200. Thus, the total additional reporting costs to the industry would be $133,700, or $93,900 discounted, based on the minimal additional reporting costs of $42,500 incurred by some firms and $91,200 incurred by the three firms requiring additional instrumentation/data recording.

Summary of Costs

The total costs for this proposed rule are $436,800, or $340,300 discounted. Of this total, industry costs are $378,300, or $289,100 discounted, and FAA costs are $58,500, or $51,200 discounted. Comments are invited on these additional cost elements; the FAA requests that all comments be accompanied by clear economic documentation.

Cost Savings

Several of the proposed changes could result in cost savings to applicants, depending upon the current inventory of the applicant's test equipment and the particular weather circumstances of the flight test. However, given the uncertainty in the annual number and duration of flight tests, it is difficult to accurately quantify these savings. For example, Section A36.2.2.2(b) would lower the minimum test temperature from 36 degrees Fahrenheit to 14 degrees Fahrenheit. This proposed change is based on technical data from extensive noise testing experience and is within the operational temperature limit of the noise measuring equipment. One of the largest cost elements of the test certification process is the cost associated with airplane down time; by extending the temperature range, down time could be minimized. Down time occurs when the test aircraft, crew, equipment and technicians are ready to commence testing but testing is delayed or postponed because the weather conditions specified in Section A36.2 are not met. While airplane noise testing is not normally planned for cold

weather, circumstances may dictate that the test be conducted under conditions which could take advantage of this new lower temperature. Under this circumstance, assuming various scenarios of daily temperature warming patterns that could result in reduced hours of airplane down time, an applicant might reduce total on-site test time of a typical certification flight test conducted under these conditions by 10 to 15 percent.

As an example of the impact of permitting testing to be conducted at a lower temperature, assuming an on-site test time of 5 to 7 days to complete a typical certification flight test under these conditions, the applicant might reduce the total test time between half a day to one full day by testing during a time period when the lower temperature condition prevailed. Assuming a cost factor of $150,000 to $200,000 per day for larger planes and $70,000 to $140,000 per day for smaller airplanes, cost reductions per test made possible by this change in minimum test temperatures could range between approximately $75,000 and $200,000 for larger airplanes and manufacturers and between $35,000 and $140,000 for smaller airplanes and manufacturers. The number of such tests conducted under cold weather conditions might be, at most, one per applicant over a 10 year period. Some applicants might not encounter this situation during a 10 year period.

The FAA estimates that 24 larger applicants would each derive cost savings of $137,500 per test and 13 smaller firms would save $87,500 each per test. The estimated industry cost savings over ten years totals $4.44 million, or $3.12 million discounted. Comments on these estimates are invited; the FAA requests that all comments be accompanied by clear documentation supporting any proposed changes.

Proposed section B36.3(a) includes a simplified test procedure that may be used in determining the sideline (lateral) noise level for propeller-driven large airplanes. This test procedure would allow the full power noise measurement to be obtained at a point (650m) below the takeoff flight path and thus eliminate the problems associated with obtaining this measurement from the conventional sideline site. According to industry sources, 40 to 45 fly-bys per test could be eliminated and between 2 and 8 microphone systems could be eliminated depending on the size of the array used by the applicant. (Many applicants currently use a 2-microphone sideline array.) In addition to the significant savings resulting from the reduction in the number of fly-bys and the number of microphone systems, further cost savings could result from a reduction in site surveying and field set-up expenses in addition to the analysis and reporting savings that result from fewer fly-bys. The total cost savings of these changes are estimated at $200,000 to $350,000 per test for manufacturers of propeller-driven large planes. These estimates are based on a range of potential scenarios involving combinations of the above elements (the number of fly-bys and the number of microphones used, flight test costs, *etc.*). As an example, based on a reduction of 42 fly-bys, the midpoint of the estimated range, and an example cost factor of $6,000 per fly-by, cost savings of $252,000 would be realized. In addition, assuming a reduction of 4 microphone systems, including surveying, setup, recording analysis and reporting at an assumed cost factor of $7,000 per system, another $28,000 (4 systems × $7,000 per system) in savings would be realized, for a total example savings of $280,000 per test under this example. Given the increasing demand for regional jets, and the financial status of large propeller-driven manufacturers, the FAA estimates that no more than 10 tests would be conducted over the next 10 years and that the derived cost savings would total $2.80 million or $1.97 million discounted.

Industry sources estimate that cost savings on the order of $37,500 per year for those applicants with considerable certification activity would be realized by the harmonization of testing, data measurement and analysis, reporting and documentation. Industry sources also claim that these cost savings would be achieved by a reduction in the confusion and the multiple interpretations that lead to delays, duplicate effort and costly negotiation caused by the existing dual certification standards. The FAA estimates that 10 firms engaged in noise certification activities would achieve cost savings of $375,000 annually for the industry. The estimated industry cost savings over ten years totals $3.75 million, or $2.63 million discounted.

Total quantifiable cost savings over ten years would be $10.99 million, or $7.72 million discounted. The FAA has not been able to quantify other potential savings made possible by the greater efficiencies and flexibility resulting from the uniformity that the proposed rule would provide. Comments are invited; the FAA requests that all comments be accompanied by clear documentation. The FAA would particularly appreciate specific cost savings data.

Benefits

Currently, airplane manufacturers must satisfy both the FAA and the European noise certification standards in order to market their aircraft in both the United States and Europe. Meeting two sets of noise certification requirements raises the cost of developing a new transport category airplane, often with no increase in safety or environmental benefit. Adoption of these proposed changes to the noise certification standards of part 36 will foster international trade, lower the cost of aircraft development, and make the certification process more efficient.

Cost-Benefit Analysis

If the proposed rule becomes effective, U.S. noise certification procedures would be nearly uniform with the JAA procedures. This harmonization between the test conditions, procedures, and noise levels necessary to demonstrate compliance with certification requirements for subsonic jet airplanes and subsonic transport category large airplanes would result in significant cost savings without compromising the environmental benefits of the noise certification standards.

The proposed rule's cost savings, over ten years (attributable to specific proposed changes to part 36 and achieving near uniformity of the standards), would be $7.24 million, $5.08 million discounted. In addition, $3.75 million, $2.63 million discounted, would be derived from overall efficiencies attributable to the harmonization effort in achieving near uniformity of the FAA and JAA standards for a total savings of $10.99 million, $7.72 million, discounted which exceeds the proposed rule's cost of $436,800 ($340,300, discounted). Since the potential cost savings exceed the additional costs, the proposed rule would be cost beneficial.

Initial Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Act) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. Agencies must perform a review to determine whether a proposed or

final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Enactment of this proposal would impose costs of $436,800 on the FAA and noise certification applicants over the ten year period of which $250,400 would be incurred by smaller applicants. The FAA has assumed that two smaller applicants which is not a substantial number of applicants would each incur measurement costs of $56,000, or a total of $112,000. Additional reporting costs requiring additional instrumentation/data recording totaling $60,800 over the ten year period would be incurred by 2 other smaller applicants or $30,400 each. Additional labor costs for new reporting requirements totaling $30,000 over the 10 year period would be incurred by 6 smaller applicants at a cost to each of these smaller applicants over the 10 year period of $5,000.

All the small (14) applicants at a cost of $3,400 each or a total of $47,600 would incur one time software costs and for four of these firms this would be the only cost they incur. The first-year cost to each of the six small applicants incurring both software and additional labor reporting costs would be $4,650. In this case, the FAA has determined this would not be a significant cost to a substantial number of small noise certification applicants. Therefore, the FAA had determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activity that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the U.S.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action 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, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Unfunded Mandates

The Unfunded Mandates reform Act of 1995 (2 U.S.C. 1532–1538) requires the FAA to assess the effects of Federal Regulatory actions on state, local, and tribal governments, and on the private sector of proposed rules that contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year. This action does not contain such a mandate.

Environmental Assessment

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 21 and 36

Aircraft, Noise control.

The Proposed Amendment

In consideration of the foregoing the Federal Aviation Administration proposes to amend 14 CFR parts 21 and 36, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

§ 21.17 [Amended]

2. Amend paragraph (a) of § 21.17 by removing the word ''parts'' and adding the word ''part'' and removing the words ''and 36''.

§ 21.101 [Amended]

3. Amend paragraph (a) of § 21.101 by removing the word ''parts'' and adding the word ''part'' and removing the words ''and 36''.

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

§ 36.1 [Amended]

2. Amend § 36.1 as follows:

a. In paragraph (a)(1) remove the words ''turbojet powered'' and add the word ''jet'' in its place.

b. In paragraph (d), introductory text, remove the words ''turbojet powered'' and add the word ''jet'' in its place.

c. Remove paragraph (d)(3).

d. In paragraph (f) remove the words ''turbojet powered'' and insert the word ''jet'' in its place.

e. In paragraph (f)(1) remove the reference to ''C36.5(a)(2)'' and add ''B36.5(b)'' in its place; remove the word ''takeoff'' and add the word ''flyover'' in its place; and remove the word ''sideline'' and add the word ''lateral'' in its place;

f. In paragraph (f)(3) remove the reference to ''C36.5(a)(2)'' and add ''B36.5(b)'' in its place and remove the

reference to ''C36.5(a)(3)'' and insert ''B36.5(c)'' in its place;

g. In paragraph (f)(4) remove the reference to ''C36.5'' and add ''B36.5(b)'' in its place;

h. In paragraph (f)(5) remove the reference to ''C36.5(a)(3)'' and add ''B36.5(c)'' in its place;

i. In paragraph (f)(6) remove the reference to ''C36.5'' and add ''B36.5(c)'' in its place; and.

j. In paragraph (g) remove the word ''turbojet'' and add the word ''jet'' in its place.

§ 36.2 [Removed and reserved]

3. Remove and reserve § 36.2.

§ 36.6 [Amended]

* * * * *

4. Amend § 36.6 as follows:

a. Add paragraphs (c)(1)(vi) through (x);

b. Revise paragraphs (d)(1)(i) and (ii), (e)(3)(ii), (e)(3)(vii), and (e)(3)(ix).

The additions and revisions read as follows:

(c) * * *

(1) * * *

(vi) IEC Publication 61094–3, entitled ''Measurement Microphones—Part 3: Primary Method for Free-Field Calibration of Laboratory Standard Microphones by the Reciprocity Technique'', edition 1.0, dated 1995.

(vii) IEC Publication 61094–4, entitled ''Measurement Microphones—Part 4: Specifications for Working Standard Microphones'', edition 1.0, dated 1995.

(viii) IEC Publication 61260, entitled ''Electroacoustics-Octave-Band and Fractional-Octave-Band filters'', edition 1.0, dated 1995.

(ix) IEC Publication 61265, entitled ''Instruments for Measurement of Aircraft Noise-Performance Requirements for Systems to Measure One-Third-Octave-Band Sound pressure Levels in Noise Certification of Transport-Category Aeroplanes'', edition 1.0, dated 1995.

(x) IEC Publication 60942, entitled ''Electroacoustics-Sound Calibrators'', edition 2.0, dated 1997.

* * * * *

(d) * * *

(1) * * *

(i) International Electrotechnical Commission, 3, rue de Varembe, Case postale 131, 1211 Geneva 20, Switzerland

(ii) American National Standard Institute, 11 West 42nd Street, New York City, New York 10036

(e) * * *

(3) * * *

(iii) Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia, 30337.

* * * * *

(vi) Southwest Region Headquarters, 2601 Meacham Boulevard, Fort Worth, Texas, 76137–4298.

(vii) Northwest Mountain Region Headquarters, 1601 Lind Avenue, Southwest, Renton, Washington 98055.

* * * * *

(ix) Alaskan Region Headquarters, 222 West 7th Avenue, 14, Anchorage, Alaska, 99513.

* * * * *

§ 36.7 [Amended]

5. Amend § 36.7 to read as follows:

a. In paragraph (a) remove the words ''turbojet powered'' and add the word ''jet'' in its place.

b. In paragraph (b)(1) remove the reference to ''Appendices A and B'' and add ''Appendix B'' in its place.

c. In paragraph (b)(2) remove the reference to ''C36.9'' and add ''B36.8'' in its place.

d. In paragraph (c)(1) remove the reference to ''C36.5(b)'' and add ''B36.6'' in its place.

e. In paragraph (d)(1) remove the word ''turbojet'' and add the word ''jet'' in its place.

f. In paragraph (d)(1)(ii) remove the reference to ''C36.5(b)'' and add ''B36.6'' in its place.

g. In paragraph (d)(2) remove the word ''turbojet'' and add the word ''jet'' in its place.

Subpart B—Transport Category Large Airplanes and Jet Airplanes

6. Revise the heading of Subpart B to read as set forth above.

7. Revise § 36.101 to read as follows:

§ 36.101 Noise measurement and evaluation.

For transport category large airplanes and jet airplanes, the noise generated by the airplane must be measured and evaluated under appendix A of this part or under an approved equivalent procedure.

8. Revise § 36.103 to read as follows:

§ 36.103 Noise Limits.

(a) For subsonic transport category large airplanes and subsonic jet airplanes compliance with this section must be shown with noise levels measured and evaluated as prescribed in Appendix A of this part, and demonstrated at the measuring points, and in accordance with the flight test conditions under section C36.8 (or an approved equivalent procedure), stated under appendix C of this part.

(b) Type certification applications for subsonic transport category large airplanes and all subsonic jet airplanes must show that the noise levels of the airplane are no greater than the Stage 3 noise limits stated in section B36.5(c) of appendix B of this part.

§ 36.201 (Subpart C) [Removed]

9. Remove and reserve subpart C, consisting of § 36.201.

§ 36.1581 [Amended]

10. Amend § 36.1581(a)(1) and (d) by removing the words ''turbojet powered'' and adding the word ''jet'' in its place.

11. Revise appendix A of part 36 to read as follows:

Appendix A to Part 36—Aircraft Noise Measurement and Evaluation Under § 36.101

Sec.

A36.1 Introduction.
A36.2 Noise certification test and measurement conditions.
A36.3 Measurement of aircraft noise received on the ground.
A36.4 Calculations of effective perceived noise level from measured data.
A36.5 Reporting of data to the FAA.
A36.6 Nomenclature: Symbols and units.
A36.7 Sound attenuation in air.
A36.8 [Reserved]
A36.9 Adjustment of airplane flight test results.

Section A36.1 Introduction.

A36.1.1 This appendix prescribes the conditions under which airplane noise certification tests must be conducted and states the measurement procedures that must be used to measure airplane noise during each test conducted on or after [insert effective date of final rule]. The procedures that must be used to determine the noise evaluation quantity designated as effective perceived noise level, EPNL, under §§ 36.101 and 36.803 are also stated.

A36.1.2 The instructions and procedures given are intended to ensure uniformity during compliance tests and to permit comparison between tests of various types of airplane conducted in various geographical locations.

A36.1.3 A complete list of symbols and units, the mathematical formulation of perceived noisiness, a procedure for determining atmospheric attenuation of sound, and detailed procedures for correcting noise levels from non-reference to reference conditions are included in sections A36.6 to A36.9 of this appendix.

Section A36.2 Noise certification test and measurement conditions.

A36.2.1 *General.*

A36.2.1.1 This section prescribes the conditions under which noise certification must be conducted and the measurement procedures that must be used.

Note: Many noise certifications involve only minor changes to the airplane type design. The resultant changes in noise can often be established reliably without the necessity of resorting to a complete test as outlined in this appendix. For this reason the FAA permits the use of appropriate ''equivalent procedures''. There are also equivalent procedures that may be used in full certification tests, in the interest of

reducing costs and providing reliable results. Guidance material on the use of equivalent procedures in the noise certification of subsonic jet and propeller-driven large airplanes is provided in the current Advisory Circular for this part.

A36.2.2 *Test environment.*

A36.2.2.1 Locations for measuring noise from an airplane in flight must be surrounded by relatively flat terrain having no excessive sound absorption characteristics such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas. No obstructions that significantly influence the sound field from the airplane must exist within a conical space above the point on the ground vertically below the microphone, the cone being defined by an axis normal to the ground and by a half-angle 80° from this axis.

Note: Those people carrying out the measurements could themselves constitute such obstruction.

A36.2.2.2 The tests must be carried out under the following atmospheric conditions.

(a) No precipitation;

(b) Ambient air temperature not above 95°F (35°C) and not below 14°F (-10°C), and relative humidity not above 95% and not below 20% over the whole noise path between a point 33 ft (10 m) above the ground and the airplane.

Note: Care should be taken to ensure that the noise measuring, airplane flight path tracking and meteorological instrumentation are operated within their environmental limitations.

(c) Relative humidity and ambient temperature over the whole noise path between a point 33 ft (10 m) above the ground and the airplane such that the sound attenuation in the one-third octave band centered on 8 kHz will not be more than 12 dB/100 m;

(d) If the atmospheric absorption coefficients vary over the PNLTM sound propagation path by more than ±1.6dB/1000ft (±0.5dB/100m) in the 3150Hz one-third octave band from the value of the absorption coefficient derived from the meteorological measurement obtained at 33 ft (10 m) above the surface, ''layered'' sections of the atmosphere must be used as described in section A36.2.2.3 to compute equivalent weighted sound attenuations in each one-third octave band; the FAA will determine whether a sufficient number of layered sections have been used. For each measurement, where multiple layering is not required, equivalent sound attenuations in each one-third octave band must be determined by averaging the atmospheric absorption coefficients for each such band at 33 ft (10 m) above ground level, and at the flight level of the airplane at the time of PNLTM, for each measurement;

(e) Average wind velocity 10 meters above ground is not to exceed 12 knots and the crosswind velocity for the airplane is not to exceed 7 knots. The average wind velocity must be determined using a thirty-second averaging period spanning the 10 dB down time interval. Maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB down time interval.

(f) No anomalous meteorological or wind conditions that would significantly affect the measured noise levels when the noise is recorded at the measuring points specified by the FAA; and

(g) Meteorological measurements must be obtained within 30 minutes of each noise test measurement; meteorological data must be interpolated to actual times of each noise measurement.

A36.2.2.3 When a multiple layering calculation is required by section A36.2.2.2(d) the atmosphere between the airplane and 33 ft (10 m) above the ground must be divided into layers of equal depth. The depth of the layers must be set to not more than the depth of the narrowest layer across which the variation in the atmospheric absorption coefficient of the 3150 Hz one-third octave band is not greater than +/-1.6 dB/1000 ft (+/-0.5 dB/100m), with a minimum layer depth of 100 ft (30 m). This requirement must be met for the propagation path at PNLTM. The mean of the values of the atmospheric absorption coefficients at the top and bottom of each layer may be used to characterize the absorption properties of each layer.

A36.2.2.4 The airport control tower or another facility must be approved by the FAA for use as the central location at which measurements of atmospheric parameters are representative of those conditions existing over the geographical area in which noise measurements are made.

A36.2.3 *Flight path measurement.*

A36.2.3.1 The airplane height and lateral position relative to the flight track must be determined by a method independent of normal flight instrumentation such as radar tracking, theodolite triangulation, or photographic scaling techniques, to be approved by the FAA.

A36.2.3.2 The airplane position along the flight path must be related to the noise recorded at the noise measurement locations by means of synchronizing signals over a distance sufficient to assure adequate data during the period that the noise is within 10 dB of the maximum value of PNLT.

A36.2.3.3 Position and performance data required to make the adjustments referred to in section A36.9 of this appendix must be automatically recorded at an approved sampling rate. Measuring equipment must be approved by the FAA.

Section A36.3 Measurement of Airplane Noise Received on the Ground.

A36.3.1 *Definitions*

For the purposes of this section the following definitions apply:

A36.3.1.1 *Measurement system* means the combination of instruments used for the measurement of sound pressure levels, including a sound calibrator, windscreen, microphone system, signal recording and conditioning devices, and one-third octave band analysis system.

Note: Practical installations may include a number of microphone systems, the outputs from which are recorded simultaneously by a multi-channel recording/analysis device via signal conditioners, as appropriate. For the purpose of this section, each complete measurement channel is considered to be a measurement system to which the requirements apply accordingly.

A36.3.1.2 *Microphone system* means the components of the measurement system which produce an electrical output signal in response to a sound pressure input signal, and which generally include a microphone, a preamplifier, extension cables, and other devices as necessary.

A36.3.1.3 *Sound incidence angle* means in degrees, an angle between the principal axis of the microphone, as defined in IEC 61094–3 and IEC 61094–4, as amended and a line from the sound source to the center of the diaphragm of the microphone.

Note: When the sound incidence angle is 0°, the sound is said to be received at the microphone at ''normal (perpendicular) incidence''; when the sound incidence angle is 90°, the sound is said to be received at ''grazing incidence''.

A36.3.1.4 *Reference direction* means, in degrees, the direction of sound incidence specified by the manufacturer of the microphone, relative to a sound incidence angle of 0°, for which the free-field sensitivity level of the microphone system is within specified tolerance limits.

A36.3.1.5 *Free-field sensitivity of a microphone system* means, in volts per Pascal, for a sinusoidal plane progressive sound wave of specified frequency, at a specified sound incidence angle, the quotient of the root mean square voltage at the output of a microphone system and the root mean square sound pressure that would exist at the position of the microphone in its absence.

A36.3.1.6 *Free-field sensitivity level of a microphone system* means, in decibels, twenty times the logarithm to the base ten of the ratio of the free-field sensitivity of a microphone system and the reference sensitivity of one volt per Pascal.

Note: The free-field sensitivity level of a microphone system may be determined by subtracting the sound pressure level (in decibels re 20 μPa) of the sound incident on the microphone from the voltage level (in decibels re 1 V) at the output of the microphone system, and adding 93.98 dB to the result.

A36.3.1.7 *Time-average band sound pressure level* means in decibels, ten times the logarithm to the base ten, of the ratio of the time mean square of the instantaneous sound pressure during a stated time interval and in a specified one-third octave band, to the square of the reference sound pressure of 20 μPa.

A36.3.1.8 *Level range* means, in decibels, an operating range determined by the setting of the controls that are provided in a measurement system for the recording and one-third octave band analysis of a sound pressure signal. The upper boundary associated with any particular level range must be rounded to the nearest decibel.

A36.3.1.9 *Calibration sound pressure level* means, in decibels, the sound pressure level produced, under reference environmental conditions, in the cavity of the coupler of the sound calibrator that is used to determine the overall acoustical sensitivity of a measurement system.

A36.3.1.10 *Reference level range* means, in decibels, the level range for determining the acoustical sensitivity of the measurement system and containing the calibration sound pressure level.

A36.3.1.11 *Calibration check frequency* means, in hertz, the nominal frequency of the sinusoidal sound pressure signal produced by the sound calibrator.

A36.3.1.12 *Level difference* means, in decibels, for any nominal one-third octave midband frequency, the output signal level measured on any level range minus the level of the corresponding electrical input signal.

A36.3.1.13 *Reference level difference* means, in decibels, for a stated frequency, the level difference measured on a level range for an electrical input signal corresponding to the calibration sound pressure level, adjusted as appropriate, for the level range.

A36.3.1.14 *Level non-linearity* means, in decibels, the level difference measured on any level range, at a stated one-third octave nominal midband frequency, minus the corresponding reference level difference, all input and output signals being relative to the same reference quantity.

A36.3.1.15 *Linear operating range* means, in decibels, for a stated level range and frequency, the range of levels of steady sinusoidal electrical signals applied to the input of the entire measurement system, exclusive of the microphone but including the microphone preamplifier and any other signal-conditioning elements that are considered to be part of the microphone system, extending from a lower to an upper boundary, over which the level non-linearity is within specified tolerance limits.

Note. Microphone extension cables as configured in the field need not be included for the linear operating range determination.

A36.3.1.16 *Windscreen insertion loss* means, in decibels, at a stated nominal one-third octave midband frequency, and for a stated sound incidence angle on the inserted microphone, the indicated sound pressure level without the windscreen installed around the microphone minus the sound pressure level with the windscreen installed.

A36.3.2 *Reference environmental conditions.*

A36.3.2.1 The reference environmental conditions for specifying the performance of a measurement system are:

(a) air temperature—73.4°F (23°C);
(b) static air pressure—101.325 kPa; and
(c) relative humidity—50 %.

A36.3.3 *General.*

Note. Measurements of aircraft noise that use instruments that conform to the specifications of this section yield one-third octave band sound pressure levels as a function of time. These one-third octave band levels are to be used for the calculation of effective perceived noise level as described in section A36.4.

A36.3.3.1 The measurement system must consist of equipment approved by the FAA and equivalent to the following:

(a) A windscreen (see A36.3.4);
(b) A microphone system (see A36.3.5);
(c) A recording and reproducing system to store the measured aircraft noise signals for subsequent analysis (see A36.3.6);
(d) A one-third octave band analysis system (see A36.3.7); and
(e) Calibration systems to maintain the acoustical sensitivity of the above systems within specified tolerance limits (see A36.3.8).

A36.3.3.2 For any component of the measurement system that converts an analog signal to digital form, such conversion must be performed so that the levels of any possible aliases or artifacts of the digitization process will be less than the upper boundary of the linear operating range by at least 50 dB at any frequency less than 12.5 kHz. The sampling rate must be at least 28 kHz. An anti-aliasing filter must be included before the digitization process.

A36.3.4 *Windscreen.*

A36.3.4.1 In the absence of wind and for sinusoidal sounds at grazing incidence, the insertion loss caused by the windscreen of a stated type installed around the microphone must not exceed ±1.5 dB at nominal one-third octave midband frequencies from 50 Hz to 10 kHz inclusive.

A36.3.5 *Microphone system.*

A36.3.5.1 The microphone system must conform to the specifications in sections A36.3.5.2 to A36.3.5.4. Various microphone systems may be approved by the FAA on the basis of demonstrated equivalent overall electroacoustical performance. Where two or more microphone systems of the same type are used, demonstration that at least one system conforms to the specifications in full is sufficient to demonstrate conformance.

Note. This demonstration of equivalent performance does not eliminate the need to calibrate and check each system as defined in section A36.3.9.

A36.3.5.2 The microphone must be mounted with the sensing element 4 ft (1.2 m) above the local ground surface and must be oriented for grazing incidence, *i.e.,* with the sensing element substantially in the plane defined by the predicted reference flight path of the aircraft and the measuring station. The microphone mounting arrangement must minimize the interference of the supports with the sound to be measured. Figure A36–1 illustrates sound incidence angles on a microphone.

A36.3.5.3 The free-field sensitivity level of the microphone and preamplifier in the reference direction, at frequencies over at least the range of one-third-octave nominal midband frequencies from 50 Hz to 5 kHz inclusive, must be within ±1.0 dB of that at the calibration check frequency, and within ±2.0 dB for nominal midband frequencies of 6.3 kHz, 8 kHz and 10 kHz.

A36.3.5.4 For sinusoidal sound waves at each one-third octave nominal midband frequency over the range from 50 Hz to 10 kHz inclusive, the free-field sensitivity levels of the microphone system at sound incidence angles of 30°, 60°, 90°, 120° and 150°, must not differ from the free-field sensitivity level at a sound incidence angle of 0° (''normal incidence'') by more than the values shown in Table A36–1. The free-field sensitivity level differences at sound incidence angles between any two adjacent sound incidence angles in

Table A36–1 must not exceed the tolerance limit for the greater angle.

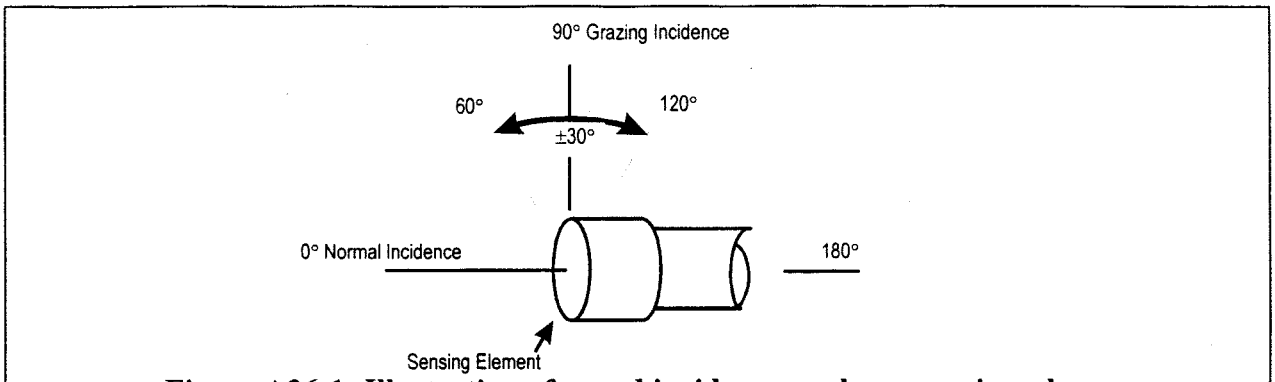


Figure A36-1: Illustration of sound incidence angles on a microphone

MAXIMUM DIFFERENCE BETWEEN THE FREE-FIELD SENSITIVITY LEVEL OF A MICROPHONE SYSTEM AT NORMAL INCIDENCE AND THE FREE-FIELD SENSITIVITY LEVEL AT SPECIFIED SOUND INCIDENCE ANGLES

Nominal midband frequency kHz	dB Sound incidence angle degrees				
	30	60	90	120	150
0.05 to 1.6	0.5	0.5	1.0	1.0	1.0
2.0	0.5	0.5	1.0	1.0	1.0
2.5	0.5	0.5	1.0	1.5	1.5
3.15	0.5	1.0	1.5	2.0	2.0
4.0	0.5	1.0	2.0	2.5	2.5
5.0	0.5	1.5	2.5	3.0	3.0
6.3	1.0	2.0	3.0	4.0	4.0
8.0	1.5	2.5	4.0	5.5	5.5
10.0	2.0	3.5	5.5	6.5	7.5

Table A36–1 Microphone Directional Response Requirements

A36.3.6 *Recording and reproducing systems.*

A36.3.6.1 A recording and reproducing system, such as a digital or analog magnetic tape recorder, a computer-based system or other permanent data storage device, must be used to store sound pressure signals for subsequent analysis. The sound produced by the aircraft must be recorded in such a way that a record of the complete acoustical signal is retained. The recording and reproducing systems must conform to the specifications in sections A36.3.6.2 to A36.3.6.9 at the recording speeds and/or data sampling rates used for the noise certification tests. Conformance must be demonstrated for the frequency bandwidths and recording channels selected for the tests.

A36.3.6.2 The recording and reproducing systems must be calibrated as described in section A36.3.9.

(a) For aircraft noise signals for which the high frequency spectral levels decrease rapidly with increasing frequency, appropriate pre-emphasis and complementary de-emphasis networks may be included in the measurement system. If pre-emphasis is included, over the range of nominal one-third octave midband frequencies from 800 Hz to 10 kHz inclusive, the electrical gain provided by the pre-emphasis network must not exceed 20 dB relative to the gain at 800 Hz.

A36.3.6.3 For steady sinusoidal electrical signals applied to the input of the entire measurement system including all parts of the microphone system except the microphone at a selected signal level within 5 dB of that corresponding to the calibration sound pressure level on the reference level range, the time-average signal level indicated by the readout device at any one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be within ±1.5 dB of that at the calibration check frequency. The frequency response of a measurement system, which includes components that convert analog signals to digital form, must be within ±0.3 dB of the response at 10 kHz over the frequency range from 10 kHz to 11.2 kHz.

Note: Microphone extension cables as configured in the field need not be included for the frequency response determination. This allowance does not eliminate the requirement of including microphone extension cables when performing the pink noise recording in section A36.3.9.5.

A36.3.6.4 For analog tape recordings, the amplitude fluctuations of a 1 kHz sinusoidal signal recorded within 5 dB of the level corresponding to the calibration sound pressure level must not vary by more than ±0.5 dB throughout any reel of the type of magnetic tape used. Conformance to this requirement must be demonstrated using a device that has time-averaging properties equivalent to those of the spectrum analyzer.

A36.3.6.5 For all appropriate level ranges and for steady sinusoidal electrical signals applied to the input of the measurement system, including all parts of the microphone system except the microphone, at one-third-octave nominal midband frequencies of 50 Hz, 1 kHz and 10 kHz, and the calibration check frequency, if it is not one of these frequencies, the level non-linearity must not exceed ±0.5 dB for a linear operating range of at least 50 dB below the upper boundary of the level range.

Note 1: Level linearity of measurement system components may be tested according

to the methods described in IEC 61265 as amended.

Note 2: Microphone extension cables configured in the field need not be included for the level linearity determination.

A36.3.6.6 On the reference level range, the level corresponding to the calibration sound pressure level must be at least 5 dB, but no more than 30 dB less than the upper boundary of the level range.

A36.3.6.7 The linear operating ranges on adjacent level ranges must overlap by at least 50 dB minus the change in attenuation introduced by a change in the level range controls.

Note: It is possible for a measurement system to have level range controls that permit attenuation changes of either 10 dB or 1 dB, for example. With 10 dB steps, the minimum overlap required would be 40 dB, and with 1 dB steps the minimum overlap would be 49 dB.

A36.3.6.8 An overload indicator must be included in the recording and reproducing systems so that an overload indication will occur during an overload condition on any relevant level range.

A36.3.6.9 Attenuators included in the measurement system to permit range changes must operate in known intervals of decibel steps.

A36.3.7 *Analysis systems.*

A36.3.7.1 The analysis system must conform to the specifications in sections A36.3.7.2 to A36.3.7.7 for the frequency bandwidths, channel configurations and gain settings used for analysis.

A36.3.7.2 The output of the analysis system must consist of one-third octave band sound pressure levels as a function of time, obtained by processing the noise signals (preferably recorded) through an analysis system with the following characteristics:

(a) A set of 24 one-third octave band filters, or their equivalent, having nominal midband frequencies from 50 Hz to 10 kHz inclusive;

(b) Response and averaging properties in which, in principle, the output from any one-third octave filter band is squared, averaged and displayed or stored as time-averaged sound pressure levels;

(c) The interval between successive sound pressure level samples must be 500 ms ±5 milliseconds (ms) for spectral analysis with or without slow time weighting, as defined in section A36.3.7.4;

(d) For those analysis systems that do not process the sound pressure signals during the period of time required for readout and/or resetting of the analyzer, the loss of data must not exceed a duration of 5 ms; and

(e) The analysis system must operate in real time from 50 Hz through at least 12 kHz inclusive. This requirement applies to all operating channels of a multi-channel spectral analysis system.

A36.3.7.3 The minimum standard for the one-third octave band analysis system is the class 2 electrical performance requirements of IEC 61260 as amended, over the range of one-third octave nominal midband frequencies from 50 Hz through 10 kHz inclusive.

Note: Tests of the one-third octave band analysis system may be made according to the methods described in IEC 61260 for relative attenuation, anti-aliasing filters, real time operation, level linearity, and filter integrated response (effective bandwidth).

A36.3.7.4 When slow time averaging is performed in the analyzer, the response of the one-third octave band analysis system to a sudden onset or interruption of a constant sinusoidal signal at the respective one-third octave nominal midband frequency, must be measured at sampling instants 0.5, 1, 1.5 and 2 seconds(s) after the onset and 0.5 and 1 s after interruption. The rising response must be -4 ± 1 dB at 0.5 s, -1.75 ± 0.75 dB at 1 s, -1 ± 0.5 dB at 1.5 s and -0.5 ± 0.5 dB at 2 s relative to the steady-state level. The falling response must be such that the sum of the output signal levels, relative to the initial steady-state level, and the corresponding rising response reading is -6.5 ± 1 dB, at both 0.5 and 1 s. At subsequent times the sum of the rising and falling responses must be -7.5 dB or less. This equates to an exponential averaging process (slow weighting) with a nominal 1 s time constant (i.e., 2 s averaging time).

A36.3.7.5 When the one-third octave band sound pressure levels are determined from the output of the analyzer without slow time weighting, slow time weighting must be simulated in the subsequent processing. Simulated slow weighted sound pressure levels can be obtained using a continuous exponential averaging process by the following equation:

$$L_s(i,k) = 10 \log [(0.60653)10^{0.1Ls[i,(k\ ndash;1)]} + (0.39347)\ 10^{0.1\ L(i,k)}]$$

Where $L_s(i,k)$ is the simulated slow weighted sound pressure level and L(i,k) is the as-measured 0.5 s time average sound pressure level determined from the output of the analyzer for the k-th instant of time and the i-th one-third octave band. For k =1, the slow weighted sound pressure Ls[i,(k-1=0)] on the right hand side should be set to 0 dB. An approximation of the continuous exponential averaging is represented by the following equation for a four sample averaging process for k ≥(4:

$$L_s(i,k) = 10 \log [(0.13)10^{0.1L[i,(k\ ndash;3)]} + (0.21)\ 10^{0.1L[i,(k\ ndash;2)]} + (0.27)\ 10^{0.1L[i,(k\ ndash;1)]} + (0.39)10^{0.1L[i,k]}]$$

Where $L_s(i,k)$ is the simulated slow weighted sound pressure level and L(i,k) is the as measured 0.5 s time average sound pressure level determined from the output of the analyzer for the k-th instant of time and the i-th one-third octave band.

The sum of the weighting factors is 1.0 in the two equations. Sound pressure levels calculated by means of either equation are valid for the sixth and subsequent 0.5 s data samples, or for times greater than 2.5 s after initiation of data analysis.

Note: The coefficients in the two equations were calculated for use in determining equivalent slow weighted sound pressure levels from samples of 0.5 s time average sound pressure levels. The equations should not be used with data samples where the averaging time differs from 0.5 s.

A36.3.7.6 The instant in time by which a slow time weighted sound pressure level is characterized must be 0.75 s earlier than the actual readout time.

Note: The definition of this instant in time is required to correlate the recorded noise with the aircraft position when the noise was emitted and takes into account the averaging period of the slow weighting. For each 0.5 second data record this instant in time may also be identified as 1.25 seconds after the start of the associated 2 second averaging period.

A36.3.7.7 The resolution of the sound pressure levels, both displayed and stored, must be 0.1 dB or finer.

A36.3.8 *Calibration systems.*

A36.3.8.1 The acoustical sensitivity of the measurement system must be determined using a sound calibrator generating a known sound pressure level at a known frequency. The minimum standard for the sound calibrator is the class 1L requirements of IEC 60942 as amended.

A36.3.9 *Calibration and checking of system.*

A36.3.9.1 Calibration and checking of the measurement system and its constituent components must be carried out to the satisfaction of the FAA by the methods specified in sections A36.3.9.2 through A36.3.9.10. The calibration adjustments, including those for environmental effects on sound calibrator output level, must be reported to the FAA and applied to the measured one-third-octave sound pressure levels determined from the output of the analyzer. Data collected during an overload indication are invalid and may not be used. If the overload condition occurred during recording, the

associated test data are invalid, whereas if the overload occurred during analysis, the analysis must be repeated with reduced sensitivity to eliminate the overload.

A36.3.9.2 The free-field frequency response of the microphone system may be determined by use of an electrostatic actuator in combination with manufacturer's data or by tests in an anechoic free-field facility. The correction for frequency response must be determined within 90 days of each test series. The correction for non-uniform frequency response of the microphone system must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.3 When the angles of incidence of sound emitted from the aircraft are within ±30° of grazing incidence at the microphone (see Figure A36–1), a single set of free-field corrections based on grazing incidence is considered sufficient for correction of directional response effects. For other cases, the angle of incidence for each 0.5 second sample must be determined and applied for the correction of incidence effects.

A36.3.9.4 For analog magnetic tape recorders, each reel of magnetic tape must carry at least 30 seconds of pink random or pseudo-random noise at its beginning and end. Data obtained from analogue tape-recorded signals will be accepted as reliable only if level differences in the 10 kHz one-third-octave-band are not more than 0.75 dB for the signals recorded at the beginning and end.

A36.3.9.5 The frequency response of the entire measurement system while deployed in the field during the test series, exclusive of the microphone, must be determined at a level within 5 dB of the level corresponding to the calibration sound pressure level on the level range used during the tests for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive, utilizing pink random or pseudo-random noise. The output of the noise generator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA within six months of each test series. Any changes in the relative output from the previous calibration at each one-third octave band may not exceed 0.2 dB. The correction for frequency response must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

A36.3.9.6 The performance of switched attenuators in the equipment used during noise certification measurements and calibration must be checked within six months of each test series to ensure that the maximum error does not exceed 0.1 dB.

A36.3.9.7 The sound pressure level produced in the cavity of the coupler of the sound calibrator must be calculated for the test environmental conditions using the manufacturer's supplied information on the influence of atmospheric air pressure and temperature. This sound pressure level is used to establish the acoustical sensitivity of the measurement system. Within six months of each test series the output of the sound calibrator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA. Changes in output from the previous calibration must not exceed 0.2 dB.

A36.3.9.8 Sufficient sound pressure level calibrations must be made during each test day to ensure that the acoustical sensitivity of the measurement system is known at the prevailing environmental conditions corresponding with each test series. The difference between the acoustical sensitivity levels recorded immediately before and immediately after each test series on each day may not exceed 0.5 dB. The 0.5 dB limit applies after any atmospheric pressure corrections have been determined for the calibrator output level. The arithmetic mean of the before and after measurements must be used to represent the acoustical sensitivity level of the measurement system for that test series. The calibration corrections must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.9 Each recording medium, such as a reel, cartridge, cassette, or diskette, must carry a sound pressure level calibration of at least 10 seconds duration at its beginning and end.

A36.3.9.10 The free-field insertion loss of the windscreen for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be determined with sinusoidal sound signals at the incidence angles determined to be applicable for correction of directional response effects per section A36.3.9.3. The interval between angles tested must not exceed 30 degrees. For a windscreen that is undamaged and uncontaminated, the insertion loss may be taken from manufacturer's data. Alternatively, within six months of each test series the insertion loss of the windscreen may be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA. Changes in the insertion loss from the previous calibration at each one-third-octave frequency band must not exceed 0.4 dB. The correction for the free-field insertion loss of the windscreen must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

A36.3.9.11 Ambient noise, including both acoustical background and electrical noise of the measurement system, must be recorded for at least 10 seconds at the measurement points with the system gain set at the levels used for the aircraft noise measurements. Ambient noise must be representative of the acoustical background that exists during the flyover test run. The recorded aircraft noise data is acceptable only if the ambient noise levels, when analyzed in the same way, and quoted in PNL (see A36.4.1.3 (a)), are at least 20 dB below the maximum PNL of the aircraft.

A36.3.9.12 Aircraft sound pressure levels within the 10 dB-down points (see A36.4.5.1) must exceed the mean ambient noise levels determined in section A36.3.9.11 by at least 3 dB in each one-third octave band, or must be adjusted using a method approved by the FAA; one method is described in the current Advisory Circular for this part.

Section A36.4 Calculation of Effective Perceived Noise Level From Measured Data.

A36.4.1 General.

A36.4.1.1 The basic element for noise certification criteria is the noise evaluation measure known as effective perceived noise level, EPNL, in units of EPNdB, which is a single number evaluator of the subjective effects of airplane noise on human beings. Simply stated, EPNL consists of instantaneous perceived noise level, PNL, corrected for spectral irregularities, and for duration. The spectral irregularity correction, called ''tone correction factor'', is made at each time increment for only the maximum tone.

A36.4.1.2 Three basic physical properties of sound pressure must be measured: Level, frequency distribution, and time variation. To determine EPNL, the instantaneous sound pressure level in each of the 24 one-third octave bands

is required for each 0.5 second increment of time during the airplane noise measurement.

A36.4.1.3 The calculation procedure that uses physical measurements of noise to derive the EPNL evaluation measure of subjective response consists of the following five steps:

(a) The 24 one-third octave bands of sound pressure level are converted to perceived noisiness (noy) using one of the methods of sub-section A36.4.2.1(a). The noy values are combined and then converted to instantaneous perceived noise levels, PNL(k).

(b) A tone correction factor C(k) is calculated for each spectrum to account for the subjective response to the presence of spectral irregularities.

(c) The tone correction factor is added to the perceived noise level to obtain tone-corrected perceived noise levels PNLT(k), at each one-half second increment:

PNLT(k) = PNL(k) + C(k)

The instantaneous values of tone-corrected perceived noise level are derived and the maximum value, PNLTM, is determined.

(d) A duration correction factor, D, is computed by integration under the curve of tone-corrected perceived noise level versus time.

(e) Effective perceived noise level, EPNL, is determined by the algebraic sum of the maximum tone-corrected perceived noise level and the duration correction factor:

EPNL = PNLTM + D

A36.4.2 *Perceived noise level.*

A36.4.2.1 Instantaneous perceived noise levels, PNL(k), must be calculated from instantaneous one-third octave band sound pressure levels, SPL(i,k) as follows:

(a) Step 1: For each one-third octave band from 50 through 10,000 Hz, convert SPL(i,k) to perceived noisiness n(i,k), by using the mathematical formulation of the noy table given in section A36.4.7, or to the Table of Perceived Noisiness in the current Advisory Circular for this part.

(b) Step 2: Combine the perceived noisiness values, n(i,k), determined in step 1 by using the following formula:

$$N(k) = n(k) + 0.15\left\{\left[\sum_{i=1}^{24} n(i,k)\right] - n(k)\right\}$$

$$= 0.85n(k) + 0.15\sum_{i=1}^{24} n(i,k)$$

Where n(k) is the largest of the 24 values of n(i,k) and N(k) is the total perceived noisiness.

(c) Step 3: Convert the total perceived noisiness, N(k), determined in Step 2 into perceived noise level, PNL(k), using the following formula:

$$PNL(k) = 40.0 + \frac{10}{\log 2}\log N(k)$$

Note: PNL(k) is plotted in the current Advisory Circular for this part.

A36.4.3 *Correction for spectral irregularities.*

A36.4.3.1 Noise having pronounced spectral irregularities (for example, the maximum discrete frequency components or tones) must be adjusted by the correction factor C(k) calculated as follows:

(a) Step 1: After applying the corrections specified under section A36.3.9, start with the sound pressure level in the 80 Hz one-third octave band (band number 3), calculate the changes in sound pressure level (or ''slopes'') in the remainder of the one-third octave bands as follows:

$s(3,k)$ = no value

$s(4,k) = SPL(4,k) - SPL(3,k)$

•

•

$s(i,k) = SPL(i,k) - SPL(i-1,k)$

•

•

$s(24,k) = SPL(24,k) - SPL(23,k)$

(b) Step 2: Encircle the value of the slope, s(i, k), where the absolute value of the change in slope is greater than five; that is where:

$|\Delta s(i,k)| = |s(i,k) - s(i-1,k)| > 5$

(c) Step 3:

(1) If the encircled value of the slope s(i,k) is positive and algebraically greater than the slope s(i − 1,k) encircle SPL(i, k).

(2) If the encircled value of the slope s(i, k) is zero or negative and the slope s(i − 1,k) is positive, encircle SPL(i − 1,k).

(3) For all other cases, no sound pressure level value is to be encircled.

(d) Step 4: Compute new adjusted sound pressure levels SPL′(i,k) as follows:

(1) For non-encircled sound pressure levels, set the new sound pressure levels equal to the original sound pressure levels, SPL′(i,k) = SPL(i,k).

(2) For encircled sound pressure levels in bands 1 through 23 inclusive, set the new sound pressure level equal to the arithmetic average of the preceding and following sound pressure levels as shown below:

$SPL'(i,k) = \frac{1}{2}[SPL(i-1,k)+SPL(i+1,k)]$

(3) If the sound pressure level in the highest frequency band (i =24) is encircled, set the new sound pressure level in that band equal to:

$SPL'(24, k) = SPL(23, k)+s(23,k)$

(e) Step 5: Recompute new slope s'(i,k), including one for an imaginary 25th band, as follows:

$s'(3,k) = s'(4,k)$

$s'(4,k) = SPL'(4,k) - SPL'(3,k)$

•

•

$s'(i,k) = SPL'(i,k) - SPL'(i-1,k)$

•

•

$s'(24,k) = SPL'(24,k) - SPL'(23,k)$

$s'(25,k) = s'(24,k)$

(f) Step 6: For i, from 3 through 23, compute the arithmetic average of the three adjacent slopes as follows:

$\bar{s}(i,k) = \frac{1}{3}[s'(i,k) + s'(i+1,k) + s'(i+2,k)]$

(g) Step 7: Compute final one-third octave-band sound pressure levels, SPL″(i,k), by beginning with band number 3 and proceeding to band number 24 as follows:

$SPL''(3,k) = SPL(3,k)$

$SPL''(4,k) = SPL''(3,k) + \bar{s}(3,k)$

•

•

$SPL''(i,k) = SPL''(i-1,k) + \bar{s}(i-1,k)$

•

•

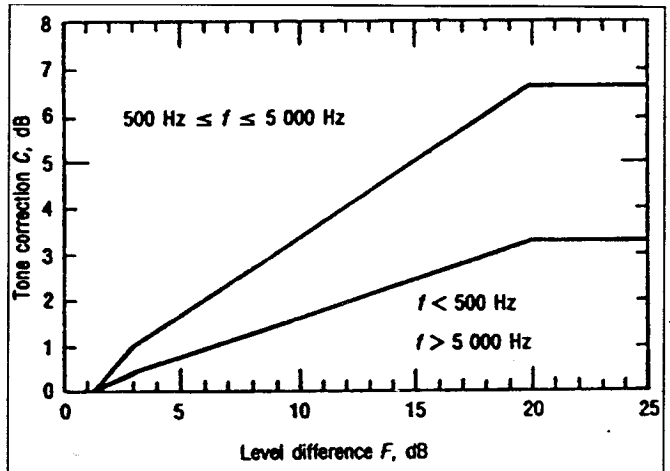
$SPL''(24,k) = SPL''(23,k) + \bar{s}(23,k)$

(h) Step 8: Calculate the differences, F (i,k), between the original sound pressure level and the final background sound pressure level as follows:

$F(i,k) = SPL(i,k) - SPL''(i,k)$

and note only values equal to or greater than 1.5.

(i) Step 9: For each of the relevant one-third octave bands (3 through 24), determine tone correction factors from the sound pressure level differences F (i,k) and Table A36–2.



Frequency f, Hz	Level difference F, dB	Tone correction C, dB
$50 \le f < 500$	$1\frac{1}{2}^* \le F < 3$	$F/3 - \frac{1}{2}$
	$3 \le F < 20$	$F/6$
	$20 \le F$	$3\frac{1}{3}$
$500 \le f \le 5\,000$	$1\frac{1}{2}^* \le F < 3$	$2F/3 - 1$
	$3 \le F < 20$	$F/3$
	$20 \le F$	$6\frac{2}{3}$
$5\,000 < f \le 10\,000$	$1\frac{1}{2}^* \le F < 3$	$F/3 - \frac{1}{2}$
	$3 \le F < 20$	$F/6$
	$20 \le F$	$3\frac{1}{3}$

* See Step 8, 4.3.1.

Table A36-2. Tone correction factor

(j) Step 10: Designate the largest of the tone correction factors, determined in Step 9, as C(k). (An example of the tone correction procedure is given in the current Advisory Circular for this part.) Tone-corrected perceived noise levels PNLT(k) must be determined by adding the C(k) values to corresponding PNL(k) values, that is:

$$PNLT(k) = PNL(k) + C(k)$$

For any i-th one-third octave band, at any k-th increment of time, for which the tone correction factor is suspected to result from something other than (or in addition to) an actual tone (or any spectral irregularity other than airplane noise), an additional analysis may be made using a filter with a bandwidth narrower than one-third of an octave. If the narrow band analysis corroborates these suspicions, then a revised value for the background sound pressure level SPL''(i,k), may be determined from the narrow band analysis and used to compute a revised tone correction factor for that particular one-third octave band. Other methods of rejecting spurious tone corrections may be approved.

A36.4.3.2 The tone correction procedure will underestimate EPNL if an important tone is of a frequency such that it is recorded in two adjacent one-third octave bands. An applicant must demonstrate that either:

(a) No important tones are recorded in two adjacent one-third octave bands; or

(b) That if it has occurred that the tone correction has been adjusted to the value it would have had if the tone had been recorded fully in a single one-third octave band.

A36.4.4 Maximum tone-corrected perceived noise level.

A36.4.4.1 The maximum tone-corrected perceived noise level, PNLTM, must be the maximum calculated value of the tone-corrected perceived noise level PNLT(k). It must be calculated using the procedure of section A36.4.3. To obtain a satisfactory noise time history, measurements must be made at 0.5 second time intervals.

Note 1: Figure A36–2 is an example of a flyover noise time history where the maximum value is clearly indicated.

Note 2: In the absence of a tone correction factor, PNLTM would equal PNLM.

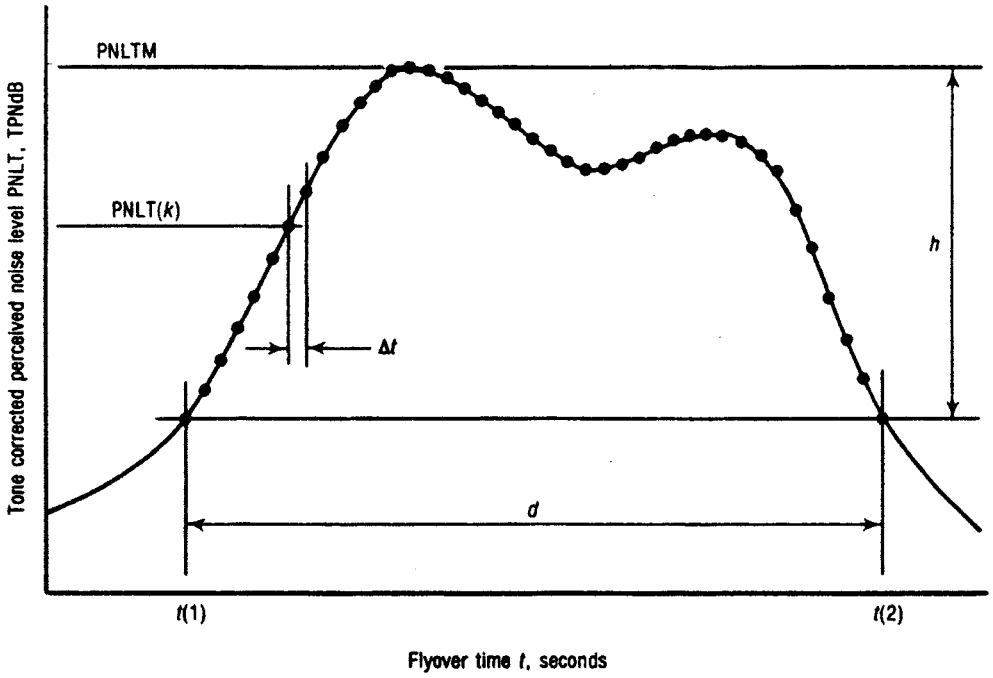


Figure A36-2. Example of perceived noise level corrected for tones as a function of aircraft flyover time

A36.4.4.2 After the value of PNLTM is obtained, the frequency band for the largest tone correction factor is identified for the two preceding and two succeeding 500 ms data samples. This is performed in order to identify the possibility of tone suppression at PNLTM by one-third octave band sharing of that tone. If the value of the tone correction factor C(k) for PNLTM is less than the average value of C(k) for the five consecutive time intervals, the average value of C(k) must be used to compute a new value for PNLTM.

A36.4.5 *Duration correction.*

A36.4.5.1 The duration correction factor D determined by the integration technique is defined by the expression:

$$D = 10\ \log\left[\left(\frac{1}{T}\right)\int_{t(1)}^{t(2)} \text{antilog}\,\frac{PNLT}{10}\,dt\right] - PNLTM$$

Where T is a normalizing time constant, PNLTM is the maximum value of PNLT, t(1) is the first point of time after which PNLT becomes greater than PNLTM–10, and t(2) is the point of time after which PNLT remains constantly less than PNLTM–10.

A36.4.5.2 Since PNLT is calculated from measured values of sound pressure level (SPL), there is no obvious equation for PNLT as a function of time. Consequently, the equation is to be rewritten with a summation sign instead of an integral sign as follows:

$$D = 10\ \log\left[\left(\frac{1}{T}\right)\sum_{k=0}^{d/\Delta t} \Delta t.\,\text{antilog}\,\frac{PNLT(k)}{10}\right] - PNLTM$$

Where Δt is the length of the equal increments of time for which PNLT(k) is calculated and d is the time interval to the nearest 0.5s during which PNLT(k) remains greater or equal to PNLTM–10.

A36.4.5.3 To obtain a satisfactory history of the perceived noise level use one of the following:

(a) Half-second time intervals for Δt; or

(b) A shorter time interval with approved limits and constants.

A36.4.5.4 The following values for T and Δt must be used in calculating D in the equation given in section A36.4.5.2:

T = 10 s, and

Δt = 0.5 s (or the approved sampling time interval).

Using these values, the equation for D becomes:

$$D = 10 \log\left[\sum_{k=0}^{2d} \text{antilog}\,\frac{PNLT(k)}{10}\right] - PNLTM - 13$$

Where d is the duration time defined by the points corresponding to the values PNLTM–10.

A36.4.5.5–If in using the procedures given in section A36.4.5.2, the limits of PNLTM–10 fall between the calculated PNLT(k) values (the usual case), the PNLT(k) values defining the limits of the duration interval must be chosen from the PNLT(k) values closest to PNLTM–10. For those cases with more than one peak value of PNLT(k), the applicable limits must be chosen to yield the largest possible value for the duration time.

A36.4.6–*Effective perceived noise level.*

A36.4.6.1–The total subjective effect of an airplane noise event, designated effective perceived noise level, EPNL, is equal to the algebraic sum of the maximum value of the tone-corrected perceived noise level, PNLTM, and the duration correction D. That is:

EPNL = PNLTM + D

Where PNLTM and D are calculated using the procedures given in sections A36.4.2, A36.4.3, A36.4.4. and A36.4.5.

A36.4.7–*Mathematical formulation of noy tables.*

A36.4.7.1–The relationship between sound pressure level (SPL) and the logarithm of perceived noisiness is illustrated in Figure A36–3 and Table A36–3.

A36.4.7.2–The bases of the mathematical formulation are:

(a) The slopes (M(b), M(c), M(d) and M(e)) of the straight lines;

(b) The intercepts (SPL(b) and SPL(c)) of the lines on the SPL axis; and

(c) The coordinates of the discontinuities, SPL(a) and log n(a); SPL(d) and log n = -1.0; and SPL(e) and log n = log (0.3).

A36.4.7.3 Calculate noy values using the following equations:

(a)

SPL ≥ SPL(a)

n = antilog {M(c)[SPL - SPL(c)]}

(b)

SPL(b) ≤ SPL < SPL(a)

n = antilog {M(b)[SPL - SPL(b)]}

(c)

SPL(e)≤SPL <SPL(b)

n = 0.3antilog {M(e)[SPL - SPL(e)]}

(d)

SPL(d)≤SPL <SPL(e)

n = 0.1 antilog {M(d)[SPL - SPL(d)]}

A36.4.7.4 Table A36–3 lists the values of the constants necessary to calculate perceived noisiness as a function of sound pressure level.

Section A36.5 Reporting Of data to the FAA.

A36.5.1 General.

A36.5.1.1 Data representing physical measurements and data used to make corrections to physical measurements must be recorded in an approved permanent form and appended to the record.

A36.5.1.2 All corrections must be reported to and approved by the FAA. In particular, the corrections to measurements for equipment response deviations must be reported.

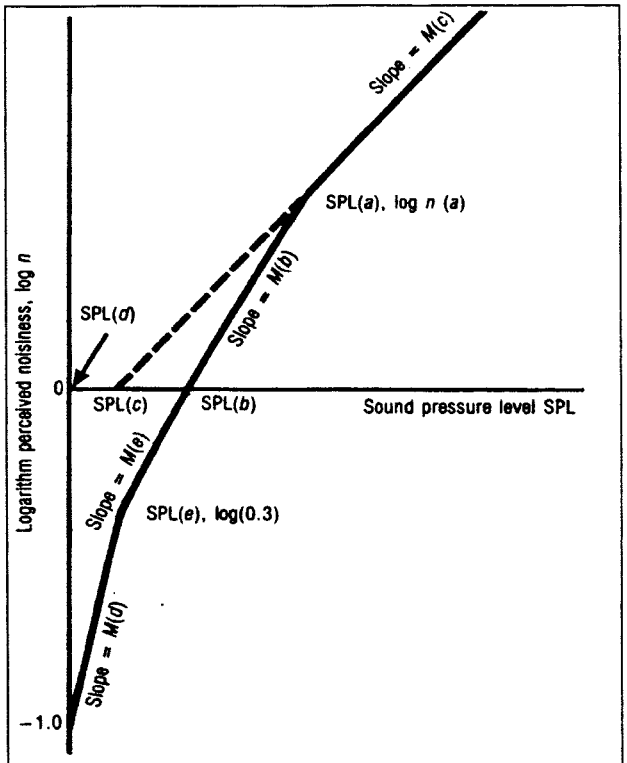


Figure A36-3. Perceived noisiness as a function of sound pressure level

A36.5.1.3 Applicants may be required to submit estimates of the individual errors inherent in each of the operations employed in obtaining the final data.

A36.5.2 *Data reporting.*

The following must be reported to the FAA in the applicant's noise certification compliance report.

A36.5.2.1 The applicant must present measured and corrected sound pressure levels in one-third octave band levels that are obtained with equipment conforming to the standards described in section A36.3 of this appendix.

A36.5.2.2 The applicant must report the make and model of equipment used for measurement and analysis of all acoustic performance and meteorological data.

BAND (*i*)	*f* HZ	SPL (*a*)	SPL (*b*)	SPL (*c*)	SPL (*d*)	SPL (*e*)	*M*(*b*)	*M*(*c*)	*M*(*d*)	*M*(*e*)
1	50	91.0	64	52	49	55	0.043478	0.030103	0.079520	0.058098
2	63	85.9	60	51	44	51	0.040570		0.068160	"
3	80	87.3	56	49	39	46	0.036831		"	0.052288
4	100	79.9	53	47	34	42	"		0.059640	0.047534
5	125	79.8	51	46	30	39	0.035336		0.053013	0.043573
6	160	76.0	48	45	27	36	0.033333			"
7	200	74.0	46	43	24	33	"			0.040221
8	250	74.9	44	42	21	30	0.032051			0.037349
9	315	94.6	42	41	18	27	0.030675	0.030103		0.034859
10	400	∞	40	40	16	25	0.030103			
11	500		40	40	16	25				
12	630		40	40	16	25				
13	800		40	40	16	25		NOT APPLICABLE		
14	1 000		40	40	16	25			0.053013	
15	1 250		38	38	15	23	0.030103		0.059640	0.034859
16	1 600		34	34	12	21	0.029960		0.053013	0.040221
17	2 000		32	32	9	18			"	0.037349
18	2 500		30	30	5	15			0.047712	0.034859
19	3 150		29	29	4	14			"	
20	4 000		29	29	5	14			0.053013	
21	5 000		30	30	6	15			"	0.034859
22	6 300	∞	31	31	10	17	0.029960		0.068160	0.037349
23	8 000	44.3	37	34	17	23	0.042285	0.029960	0.079520	"
24	10 000	50.7	41	37	21	29	"	"	0.059640	0.043573

Table A36-3. Constants for mathematically formulated noy values

A36.5.2.3 The applicant must report the following atmospheric environmental data, as measured immediately before, after, or during each test at the observation points prescribed in section A36.2 of this appendix.

(a) Air temperature and relative humidity;

(b) Maximum, minimum and average wind velocities; and

(c) Atmospheric pressure.

A36.5.2.4 The applicant must report conditions of local topography, ground cover, and events that might interfere with sound recordings.

A36.5.2.5 The applicant must report the following:

(a) Type, model and serial numbers (if any) of airplane, engine(s), or propeller(s) (as applicable);

(b) Gross dimensions of airplane and location of engines;

(c) Airplane gross weight for each test run and center of gravity range for each series of test runs;

(d) Airplane configuration such as flap, airbrakes and landing gear positions and propeller pitch angles (if applicable) for each test run;

(e) Whether auxiliary power units (APU), when fitted, are operating for each test run;

(f) Status of pneumatic engine bleeds and engine power take-offs for each test run;

(g) Indicated airspeed in knots or kilometers per hour for each test run;

(h) Engine performance data:

(1) For jet airplanes: engine performance in terms of net thrust, engine pressure ratios, jet exhaust temperatures and fan or compressor shaft rotational speeds as determined from airplane instruments and manufacturer's data for each test run;

(2) For propeller-driven airplanes: engine performance in terms of brake horsepower and residual thrust; or equivalent shaft horsepower; or engine torque and propeller rotational speed; as determined from airplane instruments and manufacturer's data for each test run;

(i) Airplane flight path and ground speed during each test run; and

(j) The applicant must report whether the airplane has any modifications or non-standard equipment likely to affect the noise characteristics of the airplane. Any such modifications or non-standard equipment must be approved by the FAA.

A36.5.3 *Reporting of noise certification reference conditions.*

A36.5.3.1 Airplane position and performance data and the noise measurements must be corrected to the noise certification reference conditions specified in the relevant sections of appendix C of this part. The applicant must report these conditions, including reference parameters, procedures and configurations.

A36.5.4 *Validity of results.*

A36.5.4.1 Three average reference EPNL values and their 90 per cent confidence limits must be produced from the test results and reported, each such value being the arithmetical average of the adjusted acoustical measurements for all valid test runs at each measurement point (flyover, lateral, or approach. If more than one acoustic measurement system is used at any single measurement location, the resulting data for each test run must be averaged as a single measurement. The calculation must be performed by:

(a) Computing the arithmetic average for each flight phase using the values from each microphone point; and

(b) Computing the overall arithmetic average for each reference condition (flyover, lateral or approach) using the values in paragraph (a) of this section and the related 90 per cent confidence limits.

A36.5.4.2 For each of the three certification measuring points, the minimum sample size is six. The sample size must be large enough to establish statistically for each of the three average noise certification levels a 90 per cent confidence limit not exceeding ±1.5 EPNdB. No test result may be omitted from the averaging process unless approved by the FAA.

Note: Methods available for calculating the 90 per cent confidence interval are shown in the current Advisory Circular for this part.

A36.5.4.3 The average EPNL figures obtained by the process described in section A36.5.4.1 must be those by which the noise performance of the airplane is assessed against the noise certification criteria.

Section A36.6 Nomenclature: Symbols and Units.

Symbol	Unit	Meaning
antilog		Antilogarithm to the base 10.
C(k)	dB	*Tone correction factor.* The factor to be added to PNL(k) to account for the presence of spectral irregularities such as tones at the k-th increment of time.
d	s	*Duration time.* The time interval between the limits of t(1) and t(2) to the nearest 0.5 second.
D	dB	*Duration correction.* The factor to be added to PNLTM to account for the duration of the noise.
EPNL	EPNdB	*Effective perceived noise level.* The value of PNL adjusted for both spectral irregularities and duration of the noise. (The unit EPNdB is used instead of the unit dB).
f(i)	Hz	*Frequency.* The geometrical mean frequency for the i-th one-third octave band.
F(i,k)	dB	*Delta-dB.* The difference between the original sound pressure level and the final background sound pressure level in the i-th one-third octave band at the k-th interval of time. In this case, background sound pressure level means the broadband noise level that would be present in the one-third octave band in the absence of the tone.
h	dB	*dB-down.* The value to be subtracted from PNLTM that defines the duration of the noise.
H	per cent	*Relative humidity.* The ambient atmospheric relative humidity.
i		*Frequency band index.* The numerical indicator that denotes any one of the 24 one-third octave bands with geometrical mean frequencies from 50 to 10,000 Hz.
k		*Time increment index.* The numerical indicator that denotes the number of equal time increments that have elapsed from a reference zero.
Log		Logarithm to the base 10.
log n(a)		*Noy discontinuity coordinate.* The log n value of the intersection point of the straight lines representing the variation of SPL with log n.
M(b), M(c), *etc.*		*Noy inverse slope.* The reciprocals of the slopes of straight lines representing the variation of SPL with log n.
n	noy	The perceived noisiness at any instant of time that occurs in a specified frequency range.
n(i,k)	noy	The perceived noisiness at the k-th instant of time that occurs in the i-th one-third octave band.
n(k)	noy	*Maximum perceived noisiness.* The maximum value of all of the 24 values of n(i) that occurs at the k-th instant of time.
N(k)	noy	*Total perceived noisiness.* The total perceived noisiness at the k-th instant of time calculated from the 24-instantaneous values of n(i,k).
p(b), p(c), *etc.*		*Noy slope.* The slopes of straight lines representing the variation of SPL with log n.
PNL	PNdB	The perceived noise level at any instant of time. (The unit PNdB is used instead of the unit dB).
PNL(k)	PNdB	The perceived noise level calculated from the 24 values of SPL (i,k), at the k-th increment of time. (The unit PNdB is used instead of the unit dB).
PNLM	PNdB	*Maximum perceived noise level.* The maximum value of PNL(k). (The unit PNdB is used instead of the unit dB).

Symbol	Unit	Meaning
PNLT	TPNdB	*Tone-corrected perceived noise level.* The value of PNL adjusted for the spectral irregularities that occur at any instant of time. (The unit TPNdB is used instead of the unit dB).
PNLT(k)	TPNdB	The tone-corrected perceived noise level that occurs at the k-th increment of time. PNLT(k) is obtained by adjusting the value of PNL(k) for the spectral irregularities that occur at the k-th increment of time. (The unit TPNdB is used instead of the unit dB).
PNLTM	TPNdB	*Maximum tone-corrected perceived noise level.* The maximum value of PNLT(k). (The unit TPNdB is used instead of the unit dB).
$PNLT_r$	TPNdB	Tone-corrected perceived noise level adjusted for reference conditions.
s(i,k)	dB	*Slope of sound pressure level.* The change in level between adjacent one-third octave band sound pressure levels at the i-th band for the k-th instant of time.
δs(i,k)	dB	Change in slope of sound pressure level.
s'(i,k)	dB	Adjusted slope of sound pressure level. The change in level between adjacent adjusted one-third octave band sound pressure levels at the i-th band for the k-th instant of time.
$\bar{s}$(i,k)	dB	Average slope of sound pressure level.
SPL	dB re 20 μPa	*Sound pressure level.* The sound pressure level that occurs in a specified frequency range at any instant of time.
SPL(a)	dB re 20 μPa	*Noy discontinuity coordinate.* The SPL value of the intersection point of the straight lines representing the variation of SPL with log n.
SPL(b) SPL(c)	dB re 20 μPa	*Noy intercept.* The intercepts on the SPL-axis of the straight lines representing the variation of SPL with log n.
SPL(i,k)	dB re 20μPa	The sound pressure level at the k-th instant of time that occurs in the i-th one-third octave band.
SPL'(i,k)	dB re 20μPa	*Adjusted sound pressure level.* The first approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time.
SPL(i)	dB re 20μPa	*Maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM.
$SPL(i)_r$	dB re 20μPa	*Corrected maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM corrected for atmospheric sound absorption.
SPL″(i,k)	dB re 20μPa	*Final background sound pressure level.* The second and final approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time.
t	s	*Elapsed time.* The length of time measured from a reference zero.
t(1), t(2)	s	*Time limit.* The beginning and end, respectively, of the noise time history defined by h.
Δt	s	*Time increment.* The equal increments of time for which PNL(k) and PNLT(k) are calculated.
T	s	*Normalizing time constant.* The length of time used as a reference in the integration method for computing duration corrections, where T = 10s.
t(°F)(°C)	°F, °C	*Temperature.* The ambient air temperature.
α(i)	dB/1000ft dB/100m	*Test atmospheric absorption.* The atmospheric attenuation of sound that occurs in the i-th one-third octave band at the measured air temperature and relative humidity.
$\alpha(i)_o$	dB/1000ft dB/100m	*Reference atmospheric absorption.* The atmospheric attenuation of sound that occurs in the i-th one-third octave band at a reference air temperature and relative humidity.
A_1	degrees	First constant climb angle (Gear up, speed of at least V_2+10 kt (V_2 +19 km/h), takeoff thrust)
A_2	degrees	Second constant climb angle (Gear up, speed of at least V_2+10 kt (V_2 +19 km/h), after cutback)
δ, ε	degrees	*Thrust cutback angles.* The angles defining the points on the takeoff flight path at which thrust reduction is started and ended respectively.
η	degrees	Approach angle.
η_r	degrees	Reference approach angle.
θ	degrees	*Noise angle (relative to flight path).* The angle between the flight path and noise path. It is identical for both measured and corrected flight paths.
ϕ	degrees	*Noise angle (relative to ground).* The angle between the noise paths and the grounds. It is identical for both measured and corrected flight paths.
μ		Engine noise emission parameter.
μ_r		Reference engine noise emission parameter.
Δ_1	EPNdB	*PNLT correction.* The correction to be added to the EPNL calculated from measured data to account for noise level changes due to differences in atmospheric absorption and noise path length between reference and test conditions.
Δ_2	EPNdB	*Adjustment to duration correction.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to the noise duration between reference and test conditions.
Δ_3	EPNdB	*Source noise adjustment.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to differences between reference and test engine operating conditions.

Section A36.7 Sound Attenuation in Air.

A36.7.1 The atmospheric attenuation of sound must be determined in accordance with the procedure presented in section A36.7.2.

A36.7.2 The relationship between sound attenuation, frequency, temperature, and humidity is expressed by the following equations.

A36.7.2(a) For calculations using the English System of Units:

$$a(i) = 10^{\left[2.05\ \log(f_0/1000) + 6.33\times10^{-4}\theta - 1.45325\right]} + n(\delta)\times10^{\left[\log(f_0) = 4.6833\times10^{-3}\theta - 2.4215\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f(0)}}\,10^{\left(\log H - 1.97274664 + 2.288074 \times 10^{-2}\theta\right)} \times 10^{\left(-9.589 \times 10^{-5}\theta^2 + 3.0 \times 10^{-7}\theta^3\right)}$$

Where

$\eta(\delta)$ is listed in Table A36–4 and f_0 in Table A36–5;

$\alpha(i)$ is the attenuation coefficient in dB/1000 ft;

θ is the temperature in °F; and

H is the relative humidity, expressed as a percentage.

A36.7.2(b) For calculations using the International System of Units (SI):

$$a(i) = 10^{\left[2.05 \log\left(f_0/1000\right) + 1.1394 \times 10^{-3}\theta - 1.916984\right]} + n(\delta) \times 10^{\left[\log\left(f_0\right) + 8.42994 \times 10^{-3}\theta - 2.755624\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f_0}}\,10^{\left(\log H = 1.328924 + 3.179768 \times 10^{-2}\theta\right)} \times 10^{\left(-2.173716 \times 10^{-4}\theta^2 + 1.7496 \times 10^{-6}\theta^3\right)}$$

Where

$\eta(\delta)$ is listed in Table A36–4 and f_0 in Table A36–5;

$\alpha(i)$ is the attenuation coefficient in dB/100 m;

θ is the temperature in °C; and

H is the relative humidity, expressed as a percentage.

A36.7.3 The values listed in table A36–4 are to be used when calculating the equations listed in section A36.7.2. A term of quadratic interpolation is to be used where necessary.

Section A36.8 [Reserved]

TABLE A36–4.—VALUES OF $\eta(\delta)$

δ	$\eta(\delta)$	δ	$\eta(\delta)$
0.00	0.000	2.50	0.450
0.25	0.315	2.80	0.400
0.50	0.700	3.00	0.370
0.60	0.840	3.30	0.330
0.70	0.930	3.60	0.300
0.80	0.975	4.15	0.260
0.90	0.996	4.45	0.245
1.00	1.000	4.80	0.230
1.10	0.970	5.25	0.220
1.20	0.900	5.70	0.210
1.30	0.840	6.05	0.205
1.50	0.750	6.50	0.200
1.70	0.670	7.00	0.200
2.00	0.570	10.00	0.200
2.30	0.495	.....	.....

TABLE A36–5.—VALUES OF F_0

One-third octave center frequency	f_0 (Hz)	One-third octave center frequency	f_0 (Hz)
50	50	800	800
63	63	1000	1000
80	80	1250	1250
100	100	1600	1600
125	125	2000	2000
160	160	2500	2500
200	200	3150	3150
250	250	4000	4000
315	315	5000	4500
400	400	6300	5600
500	500	8000	7100
630	630	10000	9000

Section A36.9 Adjustment of Airplane Flight Test Results.

A36.9.1 When certification test conditions are not identical to reference conditions, appropriate adjustments must be made to the measured noise data using the methods described in this section.

A36.9.1.1 Adjustments to the measured noise values must be made using one of the methods described in sections A36.9.3 and A36.9.4 for differences in the following:

(a) Attenuation of the noise along its path as affected by ''inverse square'' and atmospheric attenuation.

(b) Duration of the noise as affected by the distance and the speed of the airplane relative to the measuring point.

(c) Source noise emitted by the engine as affected by the differences between test and reference engine operating conditions.

(d) Airplane/engine source noise as affected by differences between test and reference airspeeds. In addition to the effect on duration, the effects of airspeed on component noise sources must be accounted for as follows: For conventional airplane configurations, when differences between test and reference airspeeds exceed 15 knots (28 km/h) true airspeed, test data and/or analysis approved by the FAA must be used to quantify the effects of the airspeed adjustment on resulting certification noise levels.

A36.9.1.2 The ''integrated'' method of adjustment, described in section A36.9.4, must be used on takeoff or approach under the following conditions:

(a) When the amount of the adjustment (using the ''simplified'' method) is greater than 8 dB on flyover, or 4 dB on approach; or

(b) When the resulting final EPNL value on flyover or approach (using the simplified method) is within 1 dB of the limiting noise levels as prescribed in Section B36.5 of this part.

A36.9.2 *Flight profiles.*

As described below, flight profiles for both test and reference conditions are defined by their geometry relative to the ground, together with the associated airplane speed relative to the ground, and the associated engine control parameter(s) used for determining the noise emission of the airplane.

A36.9.2.1 *Takeoff Profile.*

Note: Figure A36–4 illustrates a typical takeoff profile.

(a) The airplane begins the takeoff roll at point A, lifts off at point B and begins its first climb at a constant angle at point C. Where thrust or power (as appropriate) cut-back is used, it is started at point D and completed at point E. From here, the airplane begins a second climb at a constant angle up to point F, the end of the noise certification takeoff flight path.

(b) Position K_1 is the takeoff noise measuring station and AK_1 is the distance from start of roll to the flyover measuring point. Position K_2 is the lateral noise measuring station, which is located on a line parallel to, and the

specified distance from, the runway center line where the noise level during takeoff is greatest.

(c) The distance AF is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

A36.9.2.2 *Approach Profile.*

Note.: Figure A36–5 illustrates a typical approach profile.

(a) The airplane begins its noise certification approach flight path at point G and touches down on the runway at point J, at a distance OJ from the runway threshold.

(b) Position K_3 is the approach noise measuring station and K_3O is the distance from the approach noise measurement point to the runway threshold.

(c) The distance GI is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

The airplane reference point for approach measurements is the instrument landing system (ILS) antenna.

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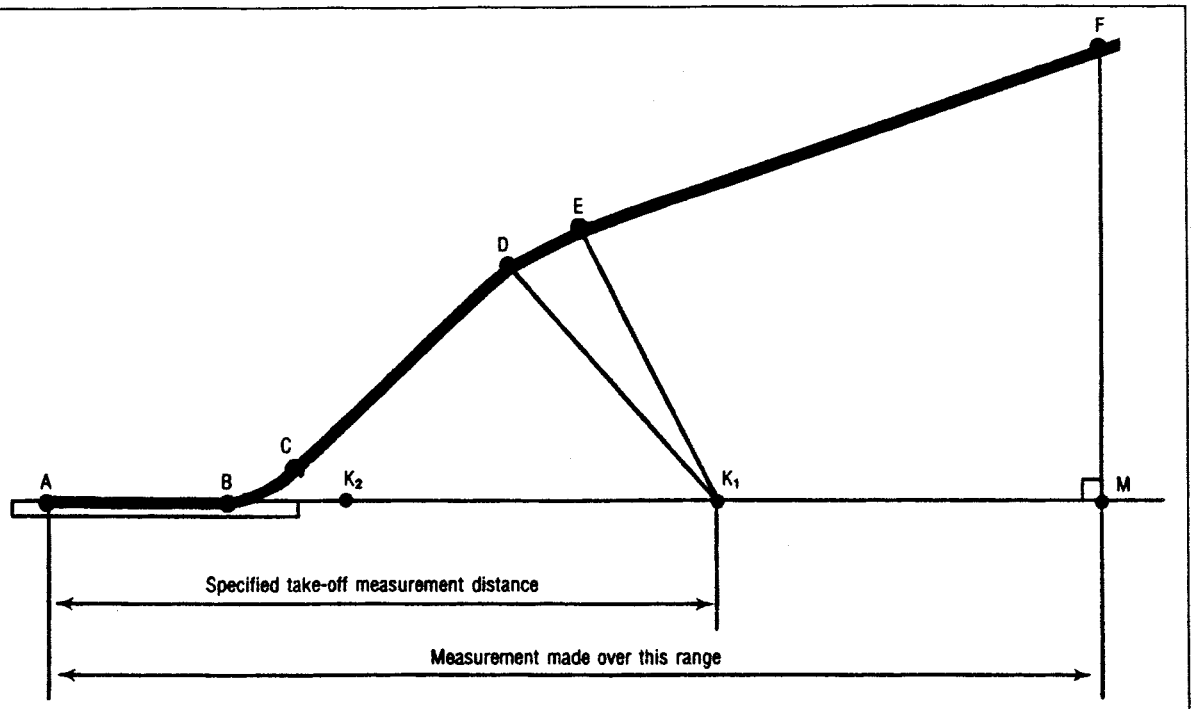

Figure A36-4. Typical Takeoff profile

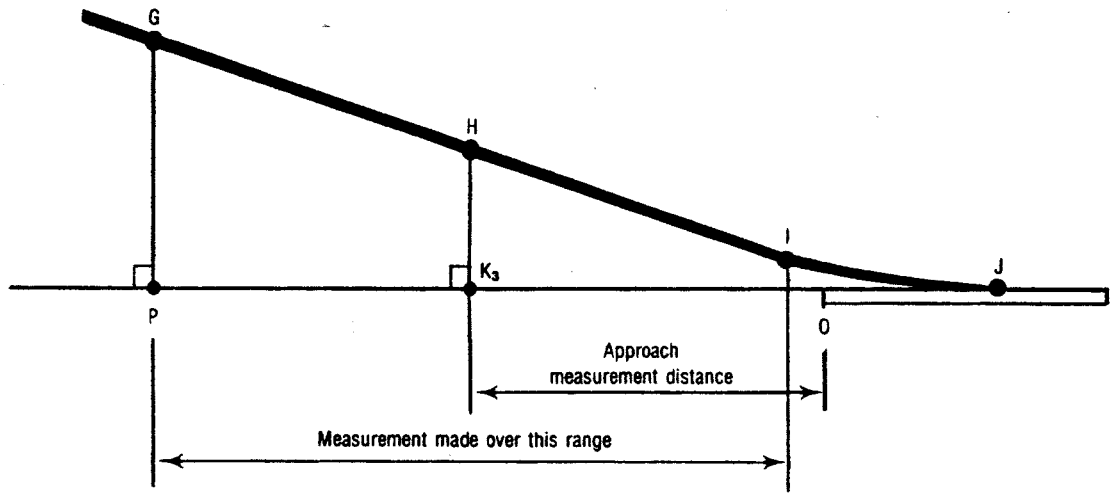

Figure A36-5. Typical Approach profile

A36.9.3 *Simplified method of adjustment.*

A36.9.3.1 *General.* As described below, the simplified adjustment method consists of applying adjustments (to the EPNL, which is

calculated from the measured data) for the differences between measured and reference conditions at the moment of PNLTM.

A36.9.3.2 *Adjustments to PNL and PNLT.*

(a) The portions of the test flight path and the reference flight path described below, and illustrated in Figure A36–6, include the noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–6:

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; X_rY_r represents the corresponding portion of the reference flight path.

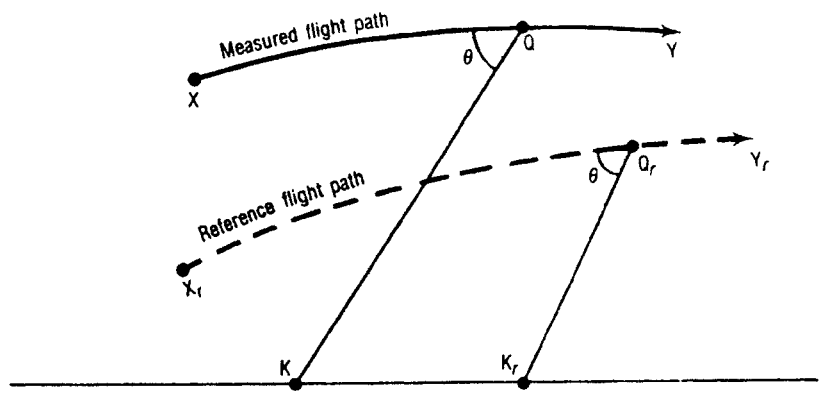

Figure A36-6. Profile characteristics influencing sound level

(2) Q represents the airplane's position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. Q_r is the corresponding position on the reference flight path, and K_r the reference measuring station. QK and Q_rk_r are, respectively, the measured and reference noise propagation paths, Q_r being determined from the assumption that QK and Q_rK_r form the same angle θ with their respective flight paths.

(b) The portions of the test flight path and the reference flight path described in paragraphs (b)(1) and (2) of this section below, and illustrated in Figure A36–7(a) and (b), include the noise time history that is relevant to the calculation of Lateral EPNL.

(1) In figure A36–7(a), XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of Lateral EPNL; in figure A36–7(b), X_rY_r represents the corresponding portion of the reference flight path. For the Lateral noise measurement, sound propagation is affected not only by inverse square and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle ψ.

(2) Q represents the airplane position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. Q_r is the corresponding position on the reference flight path, and K_r the reference measuring station. QK and Q_rK_r are, respectively, the measured and reference noise propagation paths. In this case K_r is only specified as being on a particular Lateral line; K_r and Q_r are therefore determined from the assumptions that QK and Q_rK_r:

(i) Form the same angle θ with their respective flight paths; and

(ii) Form the same angle ψ with the ground.

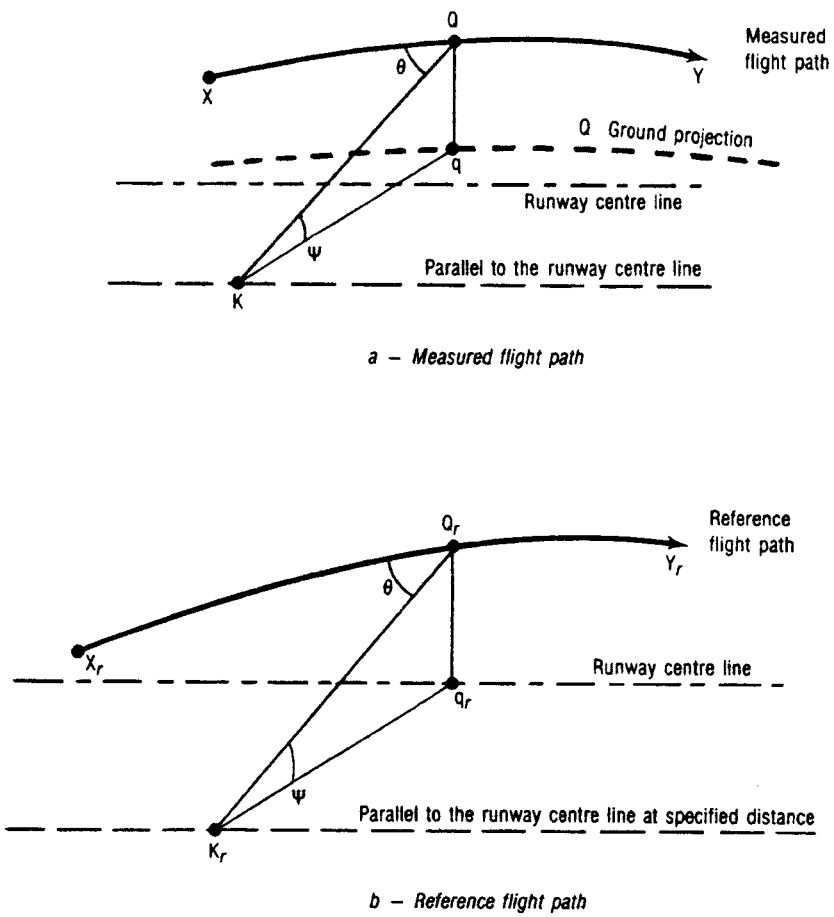

Figure A36-7. Lateral measurement - determination of reference station

A36.9.3.2.1 The one-third octave band levels SPL(i) comprising PNL (the PNL at the moment of PNLTM observed at K) must be adjusted to reference levels $SPL(i)_r$ as follows:

A36.9.3.2.1(a) For calculations using the English System of Units:

$$SPL(i)_r = SPL(i) + 0.001[\alpha(i)-\alpha(i)_o]QK + 0.001\alpha(i)_o\,(QK - Q_rK_r + 20\log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.001[\alpha(i)-\alpha(i)_o]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_o$ are the coefficients for the test and reference atmospheric conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.001\alpha(i)_o(QK-Q_rK_r)$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20\log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the ''inverse square'' law;

(4) QK and Q_rK_r are measured in feet and $\alpha(i)$ and $\alpha(i)_o$ are expressed in dB/1000 ft.

A36.9.3.2.1(b) For calculations using the International System of Units:

$$SPL(i)_r = SPL(i) + 0.01[\alpha(i)-\alpha(i)_o]QK + 0.01\alpha(i)_o\,(QK - Q_rK_r + 20\log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.01[\alpha(i)-\alpha(i)_o]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_o$ are the coefficients for the test and reference atmospheric conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.01\alpha(i)_o\,(QK-Q_rK_r$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20\log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the inverse square law;

(4) QK and Q_rK_r are measured in meters and $\alpha(i)$ and $\alpha(i)_o$ are expressed in dB/100 m.

A36.9.3.2.1.1 *PNLT Correction.*

(a) Convert the corrected values, SPL(i)r, to $PNLT_r$;

(b) Calculate the correction term using the following equation:

$$\Delta_1 = PNLT_r - PNLTM$$

A36.9.3.2.1.2 Add Δ_1 arithmetically to the EPNL calculated from the measured data.

A36.9.3.2.2 If, during a test flight, several peak values of PNLT that are within 2 dB of PNLTM are observed, the procedure defined in section A36.9.3.2.1 must be applied at each peak, and the adjustment term, calculated according to section A36.9.3.2.1, must be added to each peak to give corresponding adjusted peak values of PNLT. If these peak values exceed the value at the moment of PNLTM, the maximum value of such exceedance must be added as a further

adjustment to the EPNL calculated from the measured data.

A36.9.3.3 *Adjustments to duration correction.*

A36.9.3.3.1 Whenever the measured flight paths and/or the ground velocities of the test conditions differ from the reference flight paths and/or the ground velocities of the reference conditions, duration adjustments must be applied to the EPNL values calculated from the measured data. The adjustments must be calculated as described below.

A36.9.3.3.2 For the flight path shown in Figure A36–6, the adjustment term is calculated as follows:

$$\Delta_2 = -7.5\log(QK/Q_rK_r) + 10\log(V/V_r)$$

(a) Add Δ_2 arithmetically to the EPNL calculated from the measured data.

A36.9.3.4 *Source noise adjustments.*

A36.9.3.4.1 To account for differences between the parameters affecting engine noise as measured in the certification flight tests, and those calculated or specified in the reference conditions, the source noise adjustment must be calculated and applied. The adjustment is determined from the manufacturer's data approved by the FAA. Typical data used for this adjustment are illustrated in Figure A36–8 that shows a curve of EPNL versus the engine control parameter μ, with the EPNL data being corrected to all the other relevant reference conditions (airplane mass, speed and altitude, air temperature) and for the difference in noise between the test engine and the average engine (as defined in section B36.7(b)(7)). A sufficient number of data points over a range of values of μ_r are required to calculate the source noise adjustments for lateral, flyover and approach noise measurements.

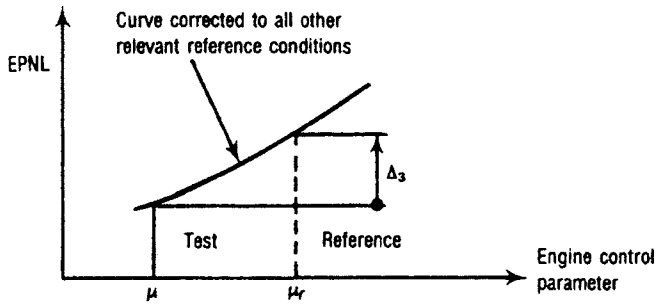

Figure A36-8. Noise thrust correction

A36.9.3.4.2 Calculate adjustment term Δ_3 by subtracting the EPNL value corresponding to the parameter μ from the EPNL value corresponding to the parameter μ_r. Add Δ_3 arithmetically to the EPNL value calculated from the measured data.

A36.9.3.5 *Symmetry adjustments.*

A36.9.3.5.1 A symmetry adjustment to each lateral noise value (determined at the section B36.4(b) measurement points), is to be made as follows:

(a) If the symmetrical measurement point is opposite the point where the highest noise level is obtained on the main lateral measurement line, the certification noise level is the arithmetic mean of the noise levels measured at these two points (see Figure A36–9(a));

(b) If the condition described in paragraph (a) of this section is not met, then it is assumed that the variation of noise with the altitude of the airplane is the same on both sides; there is a constant difference between the lines of noise versus altitude on both sides (see Figure A36–9(b)). The certification noise level is the maximum value of the mean between these lines.

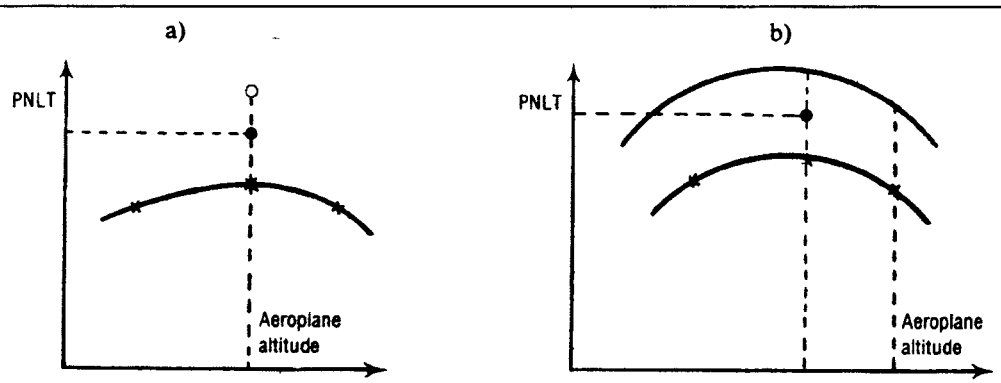

Figure A36-9. Symmetry correction

A36.9.4 Integrated method of adjustment

A36.9.4.1 *General.* As described in this section, the integrated adjustment method consists of recomputing under reference conditions points on the PNLT time history corresponding to measured points obtained during the tests, and computing EPNL directly for the new time history obtained in this way. The main principles are described in sections A36.9.4.2 through A36.9.4.4.1.

A36.9.4.2 *PNLT computations.*

(a) The portions of the test flight path and the reference flight path described in paragraph (a)(1) and (2) of this section, and illustrated in Figure A36–10, include the noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–10:

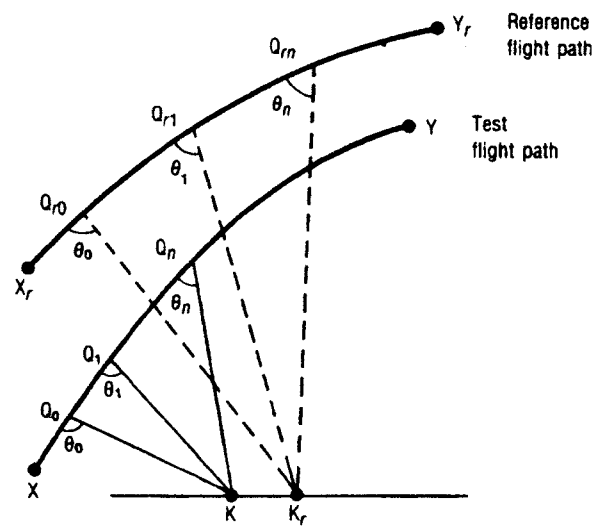

Figure 36-10. Correspondence between measured and reference flight paths for the application of the integrated method of adjustment

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; X_rY_r represents the corresponding reference flight path.

(2) The points Q_0, Q_1, Q_n represent airplane positions on the measured flight path at time t_0, t_1 and t_n respectively. Point Q_1 is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at time t_1. Point Q_{r1} represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the reference measuring station K_r at time t_{r1}. Q_1K and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths, which in each case form the angle ($_{01}$ with their respective flight paths. $Q_r\theta$ and Q_{rn} are similarly the points on the reference flight path corresponding to Q_0 and Q_n on the measured flight path. Q_0 and Q_n are chosen so that between Q_{r0} and Q_{rn} all values of $PNLT_r$ (computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included.

(b) The portions of the test flight path and the reference flight path described in paragraphs (b)(1) and (2) of this section, and illustrated in Figure A36–11(a) and (b), include the noise time history that is relevant to the calculation of lateral EPNL.

(1) In figure A36–11(a) XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of Lateral EPNL; in figure A36–11(b), X_rY_r represents the corresponding portion of the reference flight path. For the Lateral noise measurement, sound propagation is affected not only by ''inverse square'' and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle ψ.

(2) The points Q_0, Q_1 and Q_n represent airplane positions on the measured flight path at time t_0, t_1 and t_n respectively. Point Q_1 is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at time t_1. The point Q_{r1} represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the measuring station Kr at time t_{r1}. Q_1K and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths. Q_{r0} and Q_{rn} are similarly the points on the reference flight path corresponding to Q_0 and Q_n on the measured flight path. Q_0 and Q_n are chosen so that between Q_{ro} and Q_{rn} all values of $PNLT_r$ (computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included. In this case K_r is only specified as being on a particular lateral line. The position of K_r and Q_{r1} are determined from the following requirements:

(A) Q_1K and $Q_{r1}K_r$ form the same angle θ_1 with their respective flight paths; and

(B) The differences between the angles ψ_1 and ψ_{r1} must be minimized using a method, approved by the FAA. The differences between the angles are minimized since, for geometrical reasons, it is generally not possible to choose K_r so that the condition described in paragraph A36.9.4.2(b)(2)(A) is met while at the same time keeping ψ_1 and ψ_{r1} equal.

A36.9.4.2.1 In paragraphs A36.9.4.2(a)(2) and (b)(2) the time t_{r1} is

later (for $Q_{r1}K_r > Q_1K$) than t_1 by two separate amounts:

(1) The time taken for the airplane to travel the distance $Q_{r1}Q_{r0}$ at a speed V_r less the time taken for it to travel Q_1Q_0 at V;

(2) The time taken for sound to travel the distance $Q_{r1}K_r–Q_1K$.

Note 1: For the flight paths described in paragraphs A36.9.4.2(a) and (b), if thrust or power cut-back is used there will be test and reference flight paths at full thrust or power and at cut-back thrust or power. Where the transient region between these affects the final result an interpolation must be made between them by an approved method such as that given in the current Advisory Circular for this part.

A36.9.4.2.2 The measured values of $SPL(i)_1$ must be adjusted to the reference values $SPL(i)_{r1}$ to account for the differences between measured and reference noise path lengths and between measured and reference atmospheric conditions, using the methods of section A36.9.3.2.1 of this appendix. A corresponding value of PNL_{r1} must be computed according to the method in section A36.4.2. Values of PNL_r must be computed for times t_0 through t_n.

A36.9.4.2.3 For each value of PNL_{r1}, a tone correction factor C_1 must be determined by analyzing the reference values $SPL(i)_r$ using the methods of section A36.4.3 of this appendix, and added to PNL_{r1} to yield $PNLT_{r1}$. Using the process described in this paragraph, values of $PNLT_r$ must be computed for times t_0 through t_n.

A36.9.4.3 *Duration correction.*

A36.9.4.3.1 The values of $PNLT_r$ corresponding to those of PNLT at each one-half second interval must be plotted against time ($PNLT_{r1}$ at time t_{r1}). The duration correction must then be determined using the method of section A36.4.5.1 of this appendix, to yield $EPNL_r$.

A36.9.4.4 *Source Noise Adjustment.*

A36.9.4.4.1 A source noise adjustment, Δ_3, must be determined using the methods of section A36.9.3.4 of this appendix.

A36.9.5 Flight path identification positions.

Position	Description
A	Start of Takeoff roll.
B	Lift-off.
C	Start of first constant climb.
D	Start of thrust reduction.
E	Start of second constant climb.
F	End of noise certification Takeoff flight path.
G	Start of noise certification Approach flight path.
H	Position on Approach path directly above noise measuring station.
I	Start of level-off.
J	Touchdown.
K	Noise measurement point.
K_r	Reference measurement point.
K_1	Flyover noise measurement point.
K_2	Lateral noise measurement point.
K_3	Approach noise measurement point.
M	End of noise certification Takeoff flight track.
O	Threshold of Approach end of runway.
P	Start of noise certification Approach flight track.
Q	Position on measured Takeoff flight path corresponding to apparent PNLTM at station K See section B36.9.3.2.
Q_r	Position on corrected Takeoff flight path corresponding to PNLTM at station K. See section A36.9.3.2.
V	Airplane test speed.
V_r	Airplane reference speed.

A36.9.6 Flight path distances.

Distance	Unit	Meaning
AB	Feet (meters)	Length of takeoff roll. The distance along the runway between the start of takeoff roll and lift off.
AK	Feet (meters)	Takeoff measurement distance. The distance from the start of roll to the takeoff noise measurement station along the extended center line of the runway.
AM	Feet (meters)	Takeoff flight track distance. The distance from the start of roll to the takeoff flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded.
QK	Feet (meters)	Measured noise path. The distance from the measured airplane position Q to station K.
Q_rK_r	Feet (meters)	Reference noise path. The distance from the reference airplane position Q_r to station K_r.
K_3H	Feet (meters)	Airplane approach height. The height of the airplane above the approach measuring station.
OK_3	Feet (meters)	Approach measurement distance. The distance from the runway threshold to the approach measurement station along the extended center line of the runway.
OP	Feet (meters)	Approach flight track distance. The distance from the runway threshold to the approach flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded.

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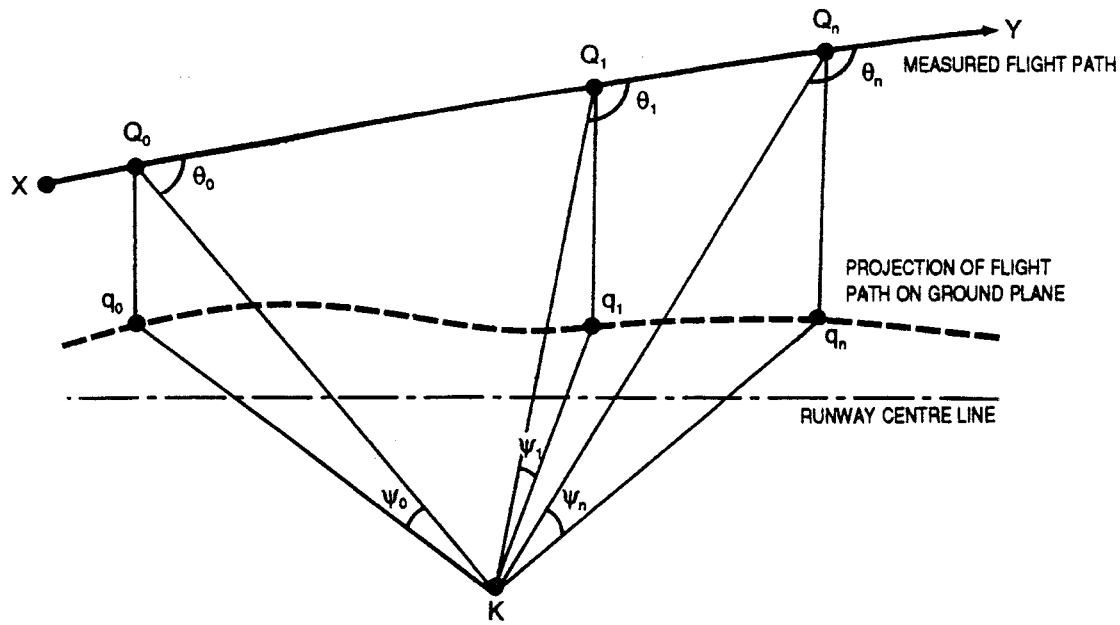

Figure A36-11(a). Measured flight path

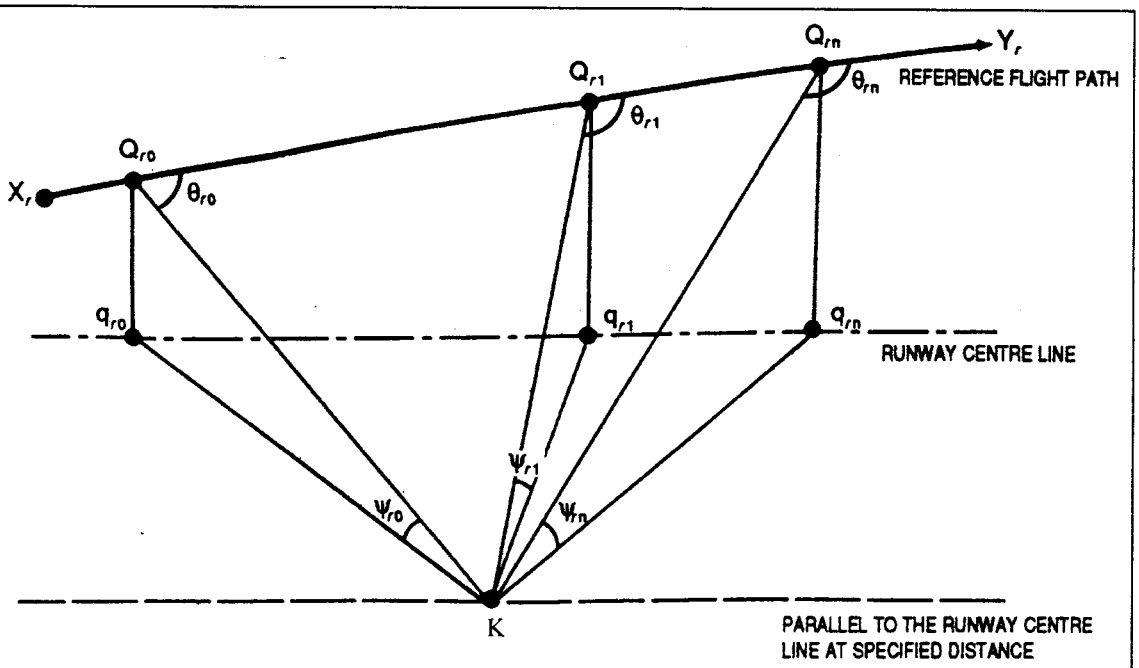

Figure A36-11(b). Reference flight path

12. Appendix B of part 36 is revised to read as follows:

Appendix B to Part 36—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

Sec.
B36.1 Noise measurement and evaluation.
B36.2 Noise evaluation metric.
B36.3 Reference noise measurement points.
B36.4 Test noise measurement.
B36.5 Maximum noise levels.
B36.6 Trade-offs.
B36.7 Noise certification reference procedures.
B36.8 Test procedures.

Section B36.1 Noise Measurement and Evaluation

Compliance with this appendix must be shown with noise levels measured and evaluated using the procedures of appendix A of this part, or under approved equivalent procedures.

Section B36.2 Noise Evaluation Metric

The noise evaluation metric is the effective perceived noise level expressed in EPNdB, as calculated using the procedures of appendix A of this part.

Section B36.3 Reference Noise Measurement Points

When tested using the procedures of this part, except as provided in section B36.6, an airplane may not exceed the noise levels specified in section B36.5 at the following points on level terrain:

(a) Lateral full-power reference noise measurement point:

(1) For jet airplanes: The point on a line parallel to and 1,476 feet (450 m) from the runway centerline, or extended centerline, where the noise level after lift-off is at a maximum during takeoff. For the purpose of showing compliance with Stage 1 or Stage 2 noise limits for an airplane powered by more than three jet engines, the distance from the runway centerline must be 0.35 nautical miles (648 m).

(2) For propeller-driven airplanes: the point on the extended centerline of the runway above which the airplane, at full takeoff power, reaches a height of 2,133 feet (650 meters). For tests conducted before March 20, 2002, an applicant may use the measurement point specified in section B36.3(a)(1) as an alternative.

(b) Flyover reference noise measurement point: The point on the extended centerline of the runway that is 21,325 feet (6,500m) from the start of the takeoff roll;

(c) Approach reference noise measurement point: The point on the extended centerline of the runway that is 6,562 feet (2,000 m) from the runway threshold. On level ground, this corresponds to a position that is 394 feet (120 m) vertically below the 3° descent path, which originates at a point on the runway 984 feet (300 m) beyond the threshold.

Section B36.4 Test Noise Measurement Points

(a) If the test noise measurement points are not located at the reference noise measurement points, any corrections for the difference in position are to be made using the same adjustment procedures as for the differences between test and reference flight paths.

(b) The applicant must obtain a sufficient number of lateral test noise measurement points to demonstrate to the FAA that the maximum noise level on the appropriate lateral line has been determined. For jet airplanes, simultaneous measurements must be made at one test noise measurement point at its symmetrical point on the other side of the runway. Propeller-driven airplanes have an inherent asymmetry in lateral noise. Therefore, simultaneous measurements must be made at each and every test noise measurement point at its symmetrical position on the opposite side of the runway. The measurement points are considered to be symmetrical if they are longitudinally within 33 feet ((±10 meters) of each other.

Section B36.5 Maximum Noise Levels

Except as provided in section B36.6 of this appendix, maximum noise levels, when determined in accordance with the noise evaluation methods of appendix A of this part, may not exceed the following:

(a) For acoustical changes to Stage 1 airplanes, regardless of the number of engines, the noise levels prescribed under § 36.7(c) of this part.

(b) For any Stage 2 airplane regardless of the number of engines:

(1) Flyover: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 5 EPNdB; the limit is 93 EPNdB for a maximum weight of 75,000 pounds or less.

(2) Lateral and approach: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 2 EPNdB; the limit is 102 EPNdB for a maximum weight of 75,000 pounds or less.

(c) For any Stage 3 airplane:

(1) Flyover.

(i) For airplanes with more than 3 engines: 106 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 44,673 pounds or less;

(ii) For airplanes with 3 engines: 104 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 63,177 pounds or less; and

(iii) For airplanes with fewer than 3 engines: 101 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 106,250 pounds or less.

(2) Lateral, regardless of the number of engines: 103 EPNdB for maximum weight of 882,000 pounds or more; for each halving of maximum weight (from 882,000 pounds), reduce the limit by 2.56 EPNdB; the limit is 94 EPNdB for a maximum weight of 77,200 pounds or less.

(3) Approach, regardless of the number of engines: 105 EPNdB for maximum weight of 617,300 pounds or more; for each halving of maximum weight (from 617,300 pounds), reduce the limit by 2.33 EPNdB; the limit is 98 EPNdB for a maximum weight of 77,200 pounds or less.

Section B36.6 Trade-Offs

Except when prohibited by sections 36.7(c)(1) and 36.7(d)(1)(ii), if the maximum noise levels are exceeded at any one or two measurement points, the following conditions must be met:

(a) The sum of the exceedance(s) may not be greater than 3 EPNdB;

(b) Any exceedance at any single point may not be greater than 2 EPNdB, and

(c) Any exceedance(s) must be offset by a corresponding amount at another point or points.

Section B36.7 Noise Certification Reference Procedures

(a) General conditions:

(1) All reference procedures must meet the requirements of section 36.3 of this part.

(2) Calculations of airplane performance and flight path must be made using the reference procedures and must be approved by the FAA.

(3) Applicants must use the takeoff and approach reference procedures prescribed in paragraphs (b) and (c) of this section.

(4) [Reserved]

(5) The reference procedures must be determined for the following reference conditions. The reference atmosphere is homogeneous in terms of temperature and relative humidity when used for the calculation of atmospheric absorption coefficients.

(i) Sea level atmospheric pressure of 2116 pounds per square foot (psf) (1013.25 hPa);

(ii) Ambient sea-level air temperature of 77°F (25°C, *i.e.* ISA+10°C);

(iii) Relative humidity of 70 per cent; and

(iv) Zero wind.

(v) In defining the reference takeoff flight path(s) for the takeoff and lateral noise measurements, the runway gradient is zero.

(b) Takeoff reference procedure:

The takeoff reference flight path is to be calculated using the following:

(1) Average engine takeoff thrust or power must be used from the start of takeoff to the point where at least the following height above runway level is reached. The takeoff thrust/power used must be the maximum available for normal operations given in the performance section of the airplane flight manual under the reference atmospheric conditions given in section B36.7(a)(5).

(i) For Stage 1 airplanes and for Stage 2 airplanes that do not have jet engines with a bypass ratio of 2 or more, the following apply:

(A): For airplanes with more than three jet engines—700 feet (214 meters).

(B): For all other airplanes—1,000 feet (305 meters).

(ii) For Stage 2 airplanes that have jet engines with a bypass ratio of 2 or more and for Stage 3 airplanes, the following apply:

(A): For airplanes with more than three engines—689 feet (210 meters).

(B): For airplanes with three engines—853 feet (260 meters).

(C) For airplanes with fewer than three engines—984 feet (300 meters).

(2) Upon reaching the height specified in paragraph (b)(1) of this section, airplane thrust or power must not be reduced below that required to maintain either of the following, whichever is greater:

(i) A climb gradient of 4 per cent; or

(ii) In the case of multi-engine airplanes, level flight with one engine inoperative.

(3) For the purpose of determining the lateral noise level, the reference flight path must be calculated using full takeoff power throughout the test run without a reduction in thrust or power. For tests conducted before March 20, 2002, a single reference flight path that includes thrust cutback in accordance with paragraph (b)(1) of this section, is an acceptable alternative in determining the lateral noise level.

(4) The takeoff reference speed is the all-engine operating takeoff climb speed selected by the applicant for use in normal operation; this speed must be at least V2+10kt (V2+19km/h) but may not be greater than V2+20kt (V2+37km/h). This speed must be attained as soon as practicable after lift-off and be maintained throughout the takeoff noise certification test. For Concorde airplanes, the test day speeds and the acoustic day reference speed are the minimum approved value of V2 +35 knots, or the all-engines-operating speed at 35 feet, whichever speed is greater as determined under the regulations constituting the type certification basis of the airplane; this reference speed may not exceed 250 knots. For all airplanes, noise values measured at the test day speeds must be corrected to the acoustic day reference speed.

(5) The takeoff configuration selected by the applicant must be maintained constantly throughout the takeoff reference procedure, except that the landing gear may be retracted. Configuration means the center of gravity position, and the status of the airplane systems that can affect airplane performance or noise. Examples include, the position of lift augmentation devices, whether the APU is operating, and whether air bleeds and engine power take-offs are operating;

(6) The weight of the airplane at the brake release must be the maximum takeoff weight at which the noise certification is requested, which may result in an operating limitation as specified in § 36.1581(d); and

(7) The average engine is defined as the average of all the certification compliant engines used during the airplane flight tests, up to and during certification, when operating within the limitations and according to the procedures given in the Flight Manual. This will determine the relationship of thrust/power to control parameters (e.g., N_1 or EPR). Noise measurements made during certification tests must be corrected using this relationship.

(c) Approach reference procedure:

The approach reference flight path must be calculated using the following:

(1) The airplane is stabilized and following a 3° glide path;

(2) For subsonic airplanes, a steady approach speed of V_{REF} + 10 kts (V_{REF} + 19 km/h) with thrust and power stabilized must be established and maintained over the approach measuring point. For Concorde airplanes, a steady approach speed that is either the landing reference speed + 10 knots or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greater. This speed must be established and maintained over the approach measuring point.

(3) The constant approach configuration used in the airworthiness certification tests, but with the landing gear down, must be maintained throughout the approach reference procedure;

(4) The weight of the airplane at touchdown must be the maximum landing weight permitted in the approach configuration defined in paragraph (c)(3) of this section at which noise certification is requested, except as provided in § 36.1581(d) of this part; and

(5) The most critical configuration must be used; this configuration is defined as that which produces the highest noise level with normal deployment of aerodynamic control surfaces including lift and drag producing devices, at the weight at which certification is requested. This configuration includes all those items listed in section A36.5.2.5 of appendix A of this part that contribute to the noisiest continuous state at the maximum landing weight in normal operation.

Section B36.8 Noise Certification Test Procedures

(a) All test procedures must be approved by the FAA.

(b) The test procedures and noise measurements must be conducted and processed in an approved manner to yield the noise evaluation metric EPNL, in units of EPNdB, as described in appendix A of this part.

(c) Acoustic data must be adjusted to the reference conditions specified in this appendix using the methods described in appendix A of this part. Adjustments for speed and thrust must be made as described in section A36.9 of this part.

(d) If the airplane's weight during the test is different from the weight at which noise certification is requested, the required EPNL adjustment may not exceed 2 EPNdB for each takeoff and 1 EPNdB for each approach. Data approved by the FAA must be used to determine the variation of EPNL with weight for both takeoff and approach test conditions. The necessary EPNL adjustment for variations in approach flight path from the reference flight path must not exceed 2 EPNdB.

(e) For approach, a steady glide path angle of 3° ± 0.5° is acceptable.

(f) If equivalent test procedures different from the reference procedures are used, the test procedures and all methods for adjusting the results to the reference procedures must be approved by the FAA. The adjustments may not exceed 16 EPNdB on takeoff and 8 EPNdB on approach. If the adjustment is more than 8 EPNdB on takeoff, or more than 4 EPNdB on approach, the resulting numbers must be more than 2 EPNdB below the limit noise levels specified in section B36.5.

(g) During takeoff, lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within +/−3% of the average airspeed between the 10dB-down points. This airspeed is determined by the pilot's airspeed indicator. However, if the instantaneous indicated airspeed exceeds +/−3 kt (+/−5.5 km/h) of the average airspeed over the 10dB-down points, and is determined by the FAA representative on the flight deck to be due to atmospheric turbulence, then the flight so affected must be rejected for noise certification purposes.

Note: Guidance material on the use of equivalent procedures is provided in the current Advisory Circular for this part.

13. Remove and reserve appendix C of part 36.

Section G36.105 [Amended]

14. Amend paragraph (f) of section G36.105 of appendix G by removing the reference ''paragraph A36.3(e) of Appendix A'' and adding ''paragraphs A36.3.8 and A36.3.9 of Appendix A'' in its place.

Section H36.111 [Amended]

15. Amend paragraph (c)(3) of section H36.111 of appendix H by removing the reference ''A36.3(f)(3)'' and adding ''A36.3.9.11'' in its place.

Section H36.201 [Amended]

16. Amended paragraph (b) of section H36.201 of appendix H by removing the reference ''B36.5(a)'' and adding ''A36.4.3.1—Step 1'' in its place.

Issued in Washington, DC, on June 29, 2000.

Paul R. Dykeman,

Acting Director of Environment and Energy.

[FR Doc. 00–16913 Filed 7–10–00; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
July 11, 2000

Part IV

Advisory Council on Historic Preservation

36 CFR Part 800

Protection of Historic Properties; Proposed Rule

Availability of Environmental Assessment and Preliminary Finding of No Significant Impact; Notice

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

RIN 3010–AA05

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Advisory Council on Historic Preservation is submitting a proposed rule for public comment. The proposed rule sets forth how Federal agencies take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment, pursuant to Section 106 of the National Historic Preservation Act. The substance of the proposed rule now submitted for public comment went into effect on June 17, 1999. Recent litigation has challenged that rule. This proposed rulemaking is intended to address questions and concerns raised by the litigation. It will also give the public a chance to provide input to determine how the rule has operated and revise the rule as appropriate.

DATES: Submit comments on or before August 10, 2000.

ADDRESSES: Address all comments concerning this proposed rule to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Fax (202) 606–8672. You may submit electronic comments to: regs@achp.gov.

FOR FURTHER INFORMATION CONTACT: Javier Marques, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004, (202) 606–8503.

SUPPLEMENTARY INFORMATION:

I. Background

Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, requires Federal agencies to take into account the effects of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Advisory Council on Historic Preservation (''Council'') a reasonable opportunity to comment on such undertakings. Through Section 211 of the National Historic Preservation Act, the Council is authorized to ''promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 * * * in its entirety.''

After publishing two Notices of Proposed Rulemaking (59 FR 50396, October 3, 1994; and 61 FR 48580, September 13, 1996), the Council published a final rule setting forth a revised process implementing Section 106 in its entirety (64 FR 27044–27084, May 18, 1999). Such rule, currently codified at 36 CFR part 800, went into effect on June 17, 1999, superseding a rule previously issued in 1986.

Two major forces behind that revision process were the 1992 amendments to the National Historic Preservation Act (NHPA), and the Administration's reinventing government efforts. In October, 1982, Public Law 102–575 amended the NHPA and affected the way Section 106 review is carried out. Among other things, the 1992 amendments:

1. Clarified that ''[p]roperties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.'' 16 U.S.C. 470a(d)(6)(A);

2. Required that ''[i]n carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described'' above. 16 U.S.C. 470a(d)(6)(B). Also see 36 CFR 800.2(c)(3) (granting such tribes and Native Hawaiian organizations, ''consulting party'' status in the Section 106 process). Implementation of this statutory consultation requirement is found throughout the proposed rule. See, for example, 36 CFR 800.3(f)(2), 800.4(a)(4), 800.4(b), 800.4(c)(1), 800.5(a), 800.6 (a)–(b).

3. Added a provision in the NHPA prohibiting Federal agencies from granting a license or assistance to applicants who, with the intent to avoid the requirements of Section 106, significantly adversely affected historic properties related to the license or assistance. In such cases, the Federal agency can only grant the license or assistance if it determines, after consulting with the Council, that circumstances justify granting the license or assistance despite the effects to the historic property. 16 U.S.C. 470h–2(k). See 36 CFR 800.9(c).

4. Explicitly recognized the practice under the 1986 regulations of having Federal agencies seek agreements to address adverse effects of their undertakings to historic properties. It also clarified that where such an agreement is not reached, the head of the relevant Federal agency must document his/her decision pursuant to Section 106. Such agency head cannot delegate that responsibility. It also provided that agreements executed pursuant to the Section 106 process would govern the relevant Federal undertaking and all its parts. 16 U.S.C. 470h–2(1). See 36 CFR 800.6, 800.7.

5. Added a member to the Council. This Council member would be a Native American or Native Hawaiian appointed by the President. 16 U.S.C. 470i(a)(11).

6. Explicitly clarified the fact that the Council has authority to ''promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety.'' 16 U.S.C. 470s (emphasis added) (highlighted text was added by the 1992 amendments); and

7. Amended the definition of the term ''undertaking,'' by adding ''[projects, activities, and programs] subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency'' to the list of actions constituting an ''undertaking.'' 16 U.S.C. 470w(7)(D). The amended, statutory definition of ''undertaking'' was adopted verbatim in the rule. 36 CFR 800.16(y).

Additionally, as part of the Administration's National Performance Review and overall regulatory streamlining efforts, the Council undertook a review of its regulatory process to identify potential changes that could improve the operation of the Section 106 process and conform it to the principles of the Administration. A thorough description of the Council's revision efforts from 1992, which led to the final rule in 1999, is found in the preamble to the final rule (64 FR 27044–27084, May 18, 1999). That preamble can be found on-line at http://www.achp.gov/regspreamble.html.

II. Litigation Prompting Decision To Go Forward With Additional Notice of Proposed Rulemaking

On February 15, 2000, the National Mining Association (''NMA'') filed a lawsuit challenging the revised rule. Among other things, the lawsuit alleged violations of the Appointments Clause of the Constitution and certain provisions of the Administrative Procedure Act pertaining to rulemaking. After assessing the allegations contained in the lawsuit, the Council decided to move forward with the present notice of proposed rulemaking. This action would provide an opportunity to address assertions about the procedural adequacy of the promulgation of the Section 106 regulations, including those about the participation of the National Trust for Historic Preservation (''Trust'') and the National Conference of State

Historic Preservation Officers (''NCSHPO''), as Council members, in the adoption of the final, revised rule. This republication action does not evidence Council agreement with the merits of the allegations, but rather the Council's desire to remove these issues from litigation.

Accordingly, at the June 23, 2000 Council meeting in Maine, the Chairman of the Council asked the Council members to take two actions. The first action was a new vote on the adoption of the rule now in place, without the participation of the Trust and NCSHPO. The Council members voted 16–0 in favor of the rule, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it.

The second action was a vote on undertaking the present, new notice of proposed rulemaking (''NPRM''). Again, the Council members voted in favor of moving forward with the NPRM by a vote of 16–0, with the Trust and NCSHPO voluntarily recusing themselves from the vote and any deliberation on it. The plan is that the rulemaking process would commence with the present, **Federal Register** publication of an NPRM using the existing rule that took effect on June 19, 1999, as the substance of the proposal. A 30-day public comment period would ensue, affording all users of the section 106 process and interested members of the public an opportunity to comment on all aspects of the proposed rule. It is anticipated that the NPRM would be published near the end of June 2000. After the close of the public comment period, the comments would be considered and incorporated into the rule as deemed appropriate. The Council membership would then vote on the new rule. The Trust and NCSHPO would not participate as Council members in any Council activities related to this rulemaking process.

Given this schedule, it is anticipated that the new final rule would be submitted to the Council for a vote on adoption at its next scheduled meeting on November 17, 2000, and that, until then, the existing rule that has been in effect since June 17, 1999 would remain in place.

III. Impact Analysis

The Regulatory Flexibility Act

The Council certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule in its proposed version only imposes mandatory responsibilities on Federal agencies. As set forth in Section 106 of the NHPA, the duties to take into account the effect of an undertaking on historic resources and to afford the Council a reasonable opportunity to comment on that undertaking are Federal agency duties. Indirect effects on small entities, if any, created in the course of a Federal agency's compliance with Section 106 of the NHPA, must be considered and evaluated by the Federal agency.

The Paperwork Reduction Act

The proposed rule does not impose reporting or recordkeeping requirements or the collection of information as defined in the Paperwork Reduction Act.

The National Environmental Policy Act

In accordance with 36 CFR part 805, the Council initiated the NEPA compliance process for the Council's rule implementing Section 106 of the NHPA prior to publication of the previous draft regulations in the **Federal Register** on September 13, 1996. On August 12, 1997, through a notice of availability on the **Federal Register**, the Council sought public comment on its Environmental Assessment (''EA'') and preliminary Finding of No Significant Impact ''FONSI''). The Council considered such comments, and confirmed its finding of no significant impact on the human environment. A notice of availability of the EA and FONSI was then published on the **Federal Register** (64 FR 25473, May 12, 1999). The Council once more will publish a notice of availability of its EA and preliminary FONSI. Because the proposed rule is identical to the one adopted in 1999, these NEPA documents on the proposed rule are substantially the same as those published on May 12, 1999, the Council will complete its NEPA compliance after considering public comments.

Executive Orders 12866 and 12875

The Council is exempt from compliance with Executive Order 12866 pursuant to implementing guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs in a memorandum dated October 12, 1993. The Council also is exempt from the documentation requirements of Executive Order 12875 pursuant to implementing guidance issued by the same OMB office in a memorandum dated January 11, 1994. Although exempt, the Council has adhered to the principles in both orders by involving and consulting with State, local, and tribal entities, members of the public, and industry groups in the development of this proposed rule and throughout the rulemaking process. The proposed rule does not mandate State, local, or tribal governments to participate in the Section 106 process. Instead, State, local, and tribal governments may decline to participate. State Historic Preservation Officers and Tribal Historic Preservation Officers to advise and assist Federal agencies, as appropriate, as part of their duties under Sections 101(b)(3) and 101(d)(2) of the NHPA, as a condition of their Federal grant assistance. In addition, in accordance with Executive Order 12875, the proposed rule includes several flexible approaches to consideration of historic properties in Federal agency decision making. The proposed rule promotes flexibility and cost effective compliance by providing for alternate procedures, categorical exemptions, standard treatments, program comments, and programmatic agreements.

The Unfunded Mandates Reform Act of 1995

The proposed rule implementing Section 106 of the NHPA does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significantly or uniquely affect small governments, and is not a significant Federal intergovernmental mandate. The Council thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act.

Executive Order 12898

The proposed rule implementing Section 106 of the NHPA does not cause adverse human health or environmental effects, but, instead, seeks to avoid adverse effects on historic properties throughout the United States. The participation and consultation process established by this rule seeks to ensure public participation—including by minority and low-income populations and communities—by those whose cultural heritage, or whose interest in historic properties, may be affected by proposed Federal undertakings. The Section 106 process is a means of access for minority and low-income populations to participate in Federal decisions or actions that may affect such resources as historically significant neighborhoods, buildings, and traditional cultural properties. The Council considers environmental justice issues in reviewing analysis of alternatives and mitigation options, particularly when Section 106 compliance is coordinated with NEPA compliance.

Memorandum Concerning Government-to-Government Relations With Native American Tribal Governments

The Council has fully complied with this Memorandum. A Native American, and subsequently a Native Hawaiian, representative served on the Council. The Council also held extensive consultation meetings with tribal representatives and tribal groups as it developed the rule. The proposed rule enhances the opportunity for Native American involvement in the Section 106 process and clarifies the obligation of Federal agencies to consult with Native Americans.

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 1966, 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. Once the rulemaking process results in a final rule, the Council will submit the report containing such final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This proposed rule would not be a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Rule Proposed for Public Comment

As stated above, the rule now being proposed for public comment is the same as the rule that has been in place since June of 1999. That rule can presently be found at 36 CFR part 800. An extensive discussion of the background leading to that rule, the rationale behind the particulars of the rule, and how the Council responded to public comments on the rule can be found on the following public documents: (a) Notice of proposed rulemaking at 59 FR 50396, October 3, 1994; (b) notice of proposed rulemaking at 61 FR 48580, September 13, 1996; and (c) final rule and preamble published at 64 FR 27044–27084, May 18, 1999, and now codified at 36 CFR Part 800 (a copy can be accessed on-line at http://www.achp.gov/regsplain.html).

List of Subjects in 36 CFR Part 800

Administrative practice and procedure, Historic preservation, Indians, Inter-governmental relations.

For the reasons stated above, the Advisory Council on Historic Preservation proposes to revise 36 CFR part 800 to read as follows:

PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants

Sec.
800.1 Purposes.
800.2 Participants in the Section 106 process.

Subpart B—The Section 106 Process

Sec.
800.3 Initiation of the Section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
800.6 Resolution of adverse effects.
800.7 Failure to resolve adverse effects.
800.8 Coordination with the National Environmental Policy Act.
800.9 Council review of Section 106 compliance.
800.10 Special requirements for protecting National Historic Landmarks.
800.11 Documentation standards.
800.12 Emergency situations.
800.13 Post-review discoveries.

Subpart C—Program Alternatives

Sec.
800.14 Federal agency program alternatives.
800.15 Tribal, State and Local Program Alternatives. (Reserved)
800.16 Definitions.
Appendix A—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

Authority: 16 U.S.C. 470s.

Subpart A—Purposes and Participants

§ 800.1 Purposes.

(a) *Purposes of the Section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the Agency Official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the Act.* Section 106 is related to other provisions of the Act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the Section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) *Timing.* The Agency Official must complete the section 106 process ''prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.'' This does not prohibit Agency Official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The Agency Official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) *Agency Official.* It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an Agency Official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The Agency Official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the Agency Official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The Agency Official may be a State, local, or tribal government official who has been delegated legal

responsibility for compliance with section 106 in accordance with Federal law.

(1) *Professional standards.* Section 112(a)(1)(A) of the Act requires each Federal agency responsible for the protection of historic resources, including archaeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) *Lead Federal agency.* If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the Agency Official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) *Use of contractors.* Consistent with applicable conflict of interest laws, the Agency Official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The Agency Official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the Agency Official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) *Consultation.* The Agency Official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The Agency Official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the Agency Official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) *Council.* The Council issues regulations to implement Section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to Agency Officials on individual undertakings and programs that affect historic properties.

(1) *Council entry into the section 106 process.* When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the Act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in Appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) *Council assistance.* Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) *Consulting parties.* The following parties have consultative roles in the section 106 process.

(1) *State Historic Preservation Officer.* (i) The State Historic Preservation Officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the Act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), of if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) *Tribal Historic Preservation Officer.*

(i) The Tribal Historic Preservation Officer (THPO) appointed or designated in accordance with the Act is the official representative of an Indian tribe for the purposes of section 106. If an Indian tribe has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(ii) If an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act, the Agency Official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. For the purposes of subpart B of this part, such tribal representative shall be included in the term ''THPO''.

(3) *Indian tribes and Native Hawaiian organizations.* Section 101(d)(6)(B) of the Act requires the Agency Official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(i) The Agency Official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the Agency Official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(ii) The Federal government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part is intended to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(iii) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal government and Indian tribes. The Agency Official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(iv) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic

properties off tribal lands, section 101(d) (6)(B) of the Act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(v) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an Agency Official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The Agency Official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(vi) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the Act may notify the Agency Official in writing that it is waiving its rights under § 800.6(c)(1) to execute a Memorandum of Agreement.

(4) *Representatives of local governments.* A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the Agency Official for purposes of section 106.

(5) *Applicants for Federal assistance, permits, licenses and other approvals.* An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The Agency Official may authorize an applicant to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the Agency Official. The Agency Official shall notify the SHPO/THPO and other consulting parties when an applicant is so authorized.

(6) *Additional consulting parties.* Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) *The public.*—(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The Agency Official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) *Providing notice and information.* The Agency Official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the Agency Official to consider in decisionmaking.

(3) *Use of agency procedures.* The Agency Official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) *Establish undertaking.* The Agency Official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking does not have the potential to cause effects on historic properties, the Agency Official has no further obligations under section 106 or this part.

(2) *Program alternatives.* If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a Programmatic Agreement in existence before [the effective date of the final rule], the Agency Official shall follow the program alternative.

(b) *Coordinate with other reviews.* The Agency Official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the Agency Official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the Agency Official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The Agency Official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The Agency Official shall then initiate consultation with the appropriate Officer or Officers.

(1) *Tribal assumption of SHPO responsibilities.* Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the Act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the Act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the Section 106 process in addition to the THPO.

(2) *Undertakings involving more than one State.* If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) *Conducting consultation.* The Agency Official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) *Failure of the SHPO/THPO to respond.* If the SHPO/THPO fails to

respond within 30 days of receipt of a request for review of a finding or determination, the Agency Official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the Agency Official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) *Consultation on tribal lands.* Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the Agency Official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) *Plan to involve the public.* In consultation with the SHPO/THPO, the Agency Official shall plan for involving the public in the section 106 process. The Agency Official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with § 800.2(d).

(f) *Identify other consulting parties.* In consultation with the SHPO/THPO, the Agency Official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The Agency Official may invite others to participate as consulting parties as the section 106 process moves forward.

(1) *Involving local governments and applicants.* The Agency Official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).

(2) *Involving Indian tribes and Native Hawaiian organizations.* The Agency Official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) *Requests to be consulting parties.* The Agency Official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) *Expediting consultation.* A consultation by the Agency Official with the SHPO/THPO and other consulting parties may address multiple steps in §§ 800.3 through 800.6 where the Agency Official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in § 800.2(d).

§ 800.4 Identification of historic properties.

(a) *Determine scope of identification efforts.* The Agency Official shall consult with the SHPO/THPO to:

(1) Determine and document the area of potential effects, as defined in § 800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature and activities associated with such sites. The Agency Official should address concerns raised about confidentiality pursuant to § 800.11(c).

(b) *Identify historic properties.* Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the Agency Official shall take the steps necessary to identify historic properties within the area of potential effect.

(1) *Level of effort.* The Agency Official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The Agency Official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The Agency Official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The Agency Official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) *Phased identification and evaluation.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the Agency Official may use a phased process to conduct identification and evaluation efforts. The Agency Official may also defer final identification and evaluation of historic properties if it is specifically provided for in a Memorandum of Agreement executed pursuant to § 800.6, a Programmatic Agreement executed pursuant to § 800.14(b), or the documents used by an Agency Official to comply with the National Environmental Policy Act pursuant to § 800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the Agency Official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) *Evaluate historic significance.*—(1) *Apply National Register Criteria.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria (36 CFR part 63) to properties identified

within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the Agency Official to reevaluate properties previously determined eligible or ineligible. The Agency Official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) *Determine whether a property is eligible.* If the Agency Official determines any of the National Register Criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the Agency Official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the Agency Official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the Agency Official to obtain a determination of eligibility.

(d) *Results of identification and evaluation.*—(1) *No historic properties affected.* If the Agency Official finds that either there are no historic properties present or three are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the Agency Official shall provide documentation of this finding as set forth in § 800.11(d) to the SHPO/THPO. The Agency Official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the Section 106 process, does not object within 30 days of receipt of an adequately documented finding, the Agency Official's responsibilities under section 106 are fulfilled.

(2) *Historic properties affected.* If the Agency Official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the Agency Official's finding under paragraph (d)(1) of this section, the Agency Official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) *Apply criteria of adverse effect.* In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the Agency Official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The Agency Official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

(2) *Examples of adverse effects.* Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) *Phased application of criteria.* Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the Agency Official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) *Finding of no adverse effect.* The Agency Official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) *Consulting party review.* If the Agency Official proposes a finding of no adverse effect, the Agency Official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the Agency Official may proceed if the SHPO/THPO agrees with the finding. The Agency Official shall carry out the undertaking in accordance with paragraph (d)(1) of this section. Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.* (i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The Agency Official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The Agency Official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the Agency Official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian

tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the Agency Official shall submit the finding, along with the documentation specified in § 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in Appendix A to this part.

(3) *Council review of findings.* When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the Agency Official shall include the documentation specified in § 800.11(e). The Council shall review the finding and notify the Agency Official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the Agency Official. The Council shall specify the basis for its determination. The Agency Official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the Agency Official may assume concurrence with the Agency Official's finding and proceed accordingly.

(d) *Results of assessment.*—(1) *No adverse effect.* The Agency Official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the Agency Official's responsibilities under section 106 and this part. If the Agency Official will not conduct the undertaking as proposed in the finding, the Agency Official shall reopen consultation under paragraph (a) of this section.

(2) *Adverse effect.* If an adverse effect is found, the Agency Official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) *Continue consultation.* The Agency Official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(1) *Notify the Council and determine Council participation.* The Agency Official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The Agency Official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A Programmatic Agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the Agency Official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the Agency Official and the consulting parties that its decision to participate meets the criteria set forth in Appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the Agency Official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(2) *Involve consulting parties.* In addition to the consulting parties identified under § 800.3(f), the Agency Official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The Agency Official shall invite any individual or organization that will assume a specific role or responsibility in a Memorandum of Agreement to participate as a consulting party.

(3) *Provide documentation.* The Agency Official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) *Involve the public.* The Agency Official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The Agency Official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The Agency Official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure that the public's views are considered in the consultation. The Agency Official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the Section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(5) *Restrictions on disclosure of information.* Section 304 of the Act and other authorities may limit the disclosure of information under paragraph (a)(3) and (4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the Agency Official believes that there are other reasons to withhold information, the Agency Official shall comply with § 800.11(c) regarding the disclosure of such information.

(b) *Resolve adverse effects.*—(1) *Resolution without the Council.* (i) The Agency Official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The Agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a Memorandum of Agreement.

(iii) If the Council decides to join the consultation, the Agency Official shall follow paragraph (b)(2) of this section.

(iv) If the Agency Official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement. The Agency Official must submit a copy of the executed Memorandum of Agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of Section 106 and this subpart.

(v) If the Agency Official, and the SHPO/THPO fail to agree on the terms of a Memorandum of Agreement, the Agency Official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the Agency Official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(2) *Resolution with Council participation.* If the Council decides to participate in the consultation, the Agency Official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the Agency Official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a Memorandum of Agreement.

(c) *Memorandum of Agreement.* A Memorandum of Agreement executed and implemented pursuant to this section evidences the Agency Official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. A Memorandum of Agreement executed pursuant to paragraph (b)(1) of this section that is filed with the Council shall be considered to be an agreement with the Council for the purposes of section 110(1) of the Act. The Agency Official shall ensure that the undertaking is carried out in accordance with the Memorandum of Agreement.

(1) *Signatories.* The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The Agency Official and the SHPO/THPO are the signatories to a Memorandum of Agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The Agency Official, the SHPO/THPO, and the Council are the signatories to a Memorandum of Agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The Agency Official and the Council are signatories to a Memorandum of Agreement executed pursuant to § 800.7(a)(2).

(2) *Invited signatories.* (i) The Agency Official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a Memorandum of Agreement concerning such properties.

(ii) The signatories should invite any party that assumes a responsibility under a Memorandum of Agreement to be a signatory.

(iii) The refusal of any party invited to become a signatory to a Memorandum of Agreement pursuant to paragraphs (c)(2)(i) or (ii) of this section does not invalidate the Memorandum of Agreement.

(3) *Concurrence by others.* The Agency Official may invite all consulting parties to concur in the Memorandum of Agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the Memorandum of Agreement does not invalidate the Memorandum of Agreement.

(4) *Reports on implementation.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include a provision for monitoring and reporting on its implementation.

(5) *Duration.* A Memorandum of Agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) *Discoveries.* Where the signatories agree it is appropriate, a Memorandum of Agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) *Amendments.* The signatories to a Memorandum of Agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the Agency Official shall file it with the Council.

(8) *Termination.* If any signatory determines that the terms of a Memorandum of Agreement cannot be carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The Agency Official shall either execute a Memorandum of Agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) *Copies.* The Agency Official shall provide each consulting party with a copy of any Memorandum of Agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) *Termination of consultation.* After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the Agency Official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates with consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the Agency Official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the Agency Official and the Council may execute a Memorandum of Agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the council shall notify the Agency Official, the agency's Federal Preservation Officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal Preservation Officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) *Comments without termination.* The council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a Memorandum of Agreement will be executed. The Council shall provide them to the Agency Official when it executes the Memorandum of Agreement.

(c) *Comments by the Council.*—(1) *Preparation.* The Council shall provide an opportunity for the Agency Official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the Agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) *Timing.* The council shall transmit its comments within 45 days of receipt of a request under paragraphs (a)(1) or (3) of this section or § 800.8(c)(3), or termination by the Council under § 800.6(b)(1)(v) or paragraph (a)(4) of this section unless otherwise agreed to by the Agency Official.

(3) *Transmittal.* The Council shall provide its comments to the head of the agency requesting comment with copies to the Agency Official, the agency's Federal Preservation Officer, all consulting parties, and others as appropriate.

(4) *Response to Council comment.* The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the Act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for

the decision and evidence of consideration of the Council's comments and providing it to the council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination with the National Environmental Policy Act.

(a) *General principles.*—(1) *Early coordination.* Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a ''major Federal action significantly affecting the quality of the human environment,'' and therefore requires preparation of an Environmental Impact Statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) *Consulting party roles.* SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) *Inclusion of historic preservation issues.* Agency Officials should ensure that preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or an EIS and Record of Decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to § 800.3(a). If so, the Agency Official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) *Use of the NEPA process for Section 106 purposes.* An Agency Official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6 if the Agency Official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) *Standards for developing environmental documents to comply with section 106.* During preparation of the EA or Draft EIS (DEIS) the Agency Official shall:

(i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the Agency Official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) *Review of environmental documents.* (i) The Agency Official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the Agency Official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the Agency Official that preparation of the EA, DEIS or EIS has not met the standard set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the Agency Official receives such an objection, the Agency Official shall refer the matter to the Council.

(3) *Resolution of objections.* Within 30 days of the Agency Official's referral of an objection under paragraph (c)(2) (ii) of this section, the Council shall not notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall enter into consultation in accordance with § 800.6(c)(2) or seek Council comments in accordance with § 800.7(a), or that it disagrees with the objection, in which case the Agency Official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) *Approval of the undertaking.* If the Agency Official has found during the preparation of the EA, DEIS or EIS that the effects of the undertaking on historic properties are adverse, the Agency Official shall specify in the FONSI or the ROD the proposed measures to avoid, minimize or mitigate such effects and ensure that the approval of the undertaking is conditioned accordingly. The Agency Official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either the proposed measures have been adopted through a binding commitment on the agency, the applicant or other entities, as appropriate, or the Council has commented and received the response to such comments under § 800.7. Where the NEPA process results in a FONSI, the Agency Official must adopt such a binding commitment through a Memorandum of Agreement drafted in compliance with § 800.6(c). Where the NEPA process results in an EIS, the binding commitment does not have to be in the form of a Memorandum of Agreement drafted in compliance with § 800.6(c).

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the Agency Official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the

binding commitment adopted pursuant to paragraph (c) (4) of this section are carried out, the Agency Official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§ 800.3 through 800.6 will be followed as necessary.

§ 800.9 Council review of Section 106 compliance.

(a) *Assessment of Agency Official compliance for individual undertakings.* The Council may provide to the Agency Official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the Agency Official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiatives. The Agency Official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an Agency Official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the Agency Official and the agency's Federal Preservation Officer and allow 30 days for the Agency Official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the Agency Official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*—(1) *Agency responsibility.* Section 110(k) of the Act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the Act governs its implementation.

(2) *Consultation with the Council.* When an Agency Official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the Agency Official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the Agency Official's notification, unless otherwise agreed to by the Agency Official, the Council shall provide the Agency Official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The Agency Official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) *Compliance with section 106.* If an Agency Official, after consulting with the Council, determines to grant the assistance, the Agency Official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) *Evaluation of section 106 operations.* The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the Act.

(1) *Information from participants.* Section 203 of the Act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The Agency Official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) *Improving the operation of section 106.* Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an Agency Official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the procedures in this part, the Council may participate in individual case reviews in a manner and for a period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the Act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) *Statutory requirement.* Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) *Resolution of adverse effects.* The Agency Official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.6.

(c) *Involvement of the Secretary.* The Agency Official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the Act to assist in the consultation.

(d) *Report of outcome.* When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any Memoranda of Agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) *Adequacy of documentation.* The Agency Official shall ensure that a determination, finding, or agreement

under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. When an Agency Official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the Agency Official and specify the information needed to meet the standard. At the request of the Agency Official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the Agency Official and the consulting parties.

(b) *Format.* The Agency Official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) *Confidentiality.*—(1) *Authority to withhold information.* Section 304 of the Act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the Act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the Act.

(2) *Consultation with the Council.* When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) *Other authorities affecting confidentiality.* Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the Agency Official to protect the privacy of non-governmental applicants.

(d) *Finding of no historic properties affected.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) *Finding of no adverse effect or adverse effect.* Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties.

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) *Memorandum of Agreement.* When a Memorandum of Agreement is filed with the Council, the documentation shall include any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) *Requests for comment without a Memorandum of Agreement.* Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies of summaries of any views submitted to the Agency Official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.

(a) *Agency procedures.* The Agency Official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government or the governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) *Alternatives to agency procedures.* In the event an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government or the governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the Agency Official may comply with section 106 by:

(1) Following a Programmatic Agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the Agency Official determines that circumstances do not permit seven days for comment, the Agency Official shall notify the Agency Official, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) *Local governments responsible for section 106 compliance.* When a local government official serves as the Agency Official for section 106 compliance, paragraphs (a) and (b) of

this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the Agency Official shall comply with §§ 800.3 through 800.6.

(d) *Applicability.* This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) *Planning for subsequent discoveries.*

(1) *Using a Programmatic Agreement.* An Agency Official may develop a Programmatic Agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) *Using agreement documents.* When the Agency Official's identification efforts in accordance with § 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no Programmatic Agreement has been developed pursuant to paragraph (a)(1) of this section, the Agency Official shall include in any finding of no adverse effect or Memorandum of Agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the Agency Official's responsibilities under section 106 and this part.

(b) *Discoveries without prior planning.* If historic properties are discovered or unanticipated effects on historic properties found after the Agency Official has completed the section 106 process without establishing a process under paragraph (a) of this section, the Agency Official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the Agency Official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the Agency Official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archaeological data, the Agency Official may comply with the Archaeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the Agency Official has approved the undertaking and construction has commenced, determine actions that the Agency Official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the actions proposed by the Agency Official to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification and the Agency Official shall take into account their recommendations and carry out appropriate actions. The Agency Official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The Agency Official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The Agency Official shall specify the National Register Criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the Agency Official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the Agency Official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

§ 800.10 Federal agency program alternatives.

(a) *Alternate procedures.* An Agency Official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a) (2) (E) of the Act.

(1) *Development of procedures.* The Agency Official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternative procedures, publish notice of the availability of proposed alternate procedures in the **Federal Register** and take other appropriate steps to seek public input during the development of alternate procedure.

(2) *Council review.* The Agency Official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, if shall notify the Agency Official and the Agency Official may adopt them as final alternate procedures.

(3) *Notice.* The Agency Official shall notify the parties with which it has consulted and public notice of final alternate procedures in the **Federal Register**.

(4) *Legal effect.* Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the Act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) *Programmatic Agreements.* The Council and the Agency Official may negotiate a Programmatic Agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) *Use of Programmatic Agreements.* A Programmatic Agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decision making responsibilities;

(iv) Where routine management activities are undertaken at Federal Installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) *Developing Programmatic Agreements for agency programs.* (i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the Programmatic Agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Agency Official shall also follow paragraph (f) of this section.

(ii) *Public Participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The Agency Official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) *Effect.* The Programmatic Agreement shall take effect when executed by the Council, the Agency Official and the appropriate SHPOs/THPOs when the Programmatic Agreement concerns a specific region or the President of NCSHPO when NCSHPO has participated in the consultation. A Programmatic Agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved Programmatic Agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the President of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional Programmatic Agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the Act and the SHPO is signatory to Programmatic Agreement, the THPO assumes the role of a signatory, including the right to terminate a regional Programmatic Agreement on lands under the jurisdiction of the tribe.

(iv) *Notice.* The Agency Official shall notify the parties with which it has consulted that a Programmatic Agreement has been executed under this paragraph (b)(2), provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(v) If the Council determines that the terms of a Programmatic Agreement are not being carried out, or if such an agreement is terminated, the Agency Official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) *Developing Programmatic Agreements for complex or multiple undertakings.* Consultation to develop a Programmatic Agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the Agency Official shall comply with the provisions of subpart B of this part for each individual undertaking.

(c) *Exempted categories.*—(1) *Criteria for establishing.* An Agency Official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as ''undertakings'' as defined in § 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the Act.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The Agency Official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Agency Official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in paragraph (f) of this section.

(5) *Council review of proposed exemptions.* The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the public. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt. The decision shall be based on the consistency of the exemption with the purposes of the Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the Act.

(6) *Legal consequences.* any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the Agency Official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B.

(7) *Termination.* The Council may terminate an exemption at the request of the Agency Official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the Agency Official 30 days before termination becomes effective.

(8) *Notice.* The Agency Official shall publish notice of any approved exemption in the **Federal Register**.

(d) *Standard treatments.*—(1) *Establishment.* The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the **Federal Register**.

(2) *Public participation.* The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part.

The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an Agency Official has proposed a standard treatment, the Council may request the Agency Official to arrange for public involvement.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of the SHPOs/THPOs on the proposed standard treatment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in paragraph (f) of this section.

(5) *Termination.* The Council may terminate a standard treatment by publication of a notice in the **Federal Register** 30 days before the termination takes effect.

(e) *Program comments.* An Agency Official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§ 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) *Agency request.* The Agency Official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the Agency Official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) *Public participation.* The Agency Official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The Agency Official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) *Consultation with SHPOs/THPOs.* The Council shall notify and consider the views of the SHPOs/THPOs on the proposed program comment.

(4) *Consultation with Indian tribes and Native Hawaiian organizations.* If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the Agency Official set forth in paragraph (f) of this section.

(5) *Council action.* Unless the Council requests additional documentation, notifies the Agency Official that it will decline to comment, or obtains the consent of the Agency Official to extend the period for providing comment, the Council shall comment to the Agency Official within 45 days of the request.

(i) If the Council comments, the Agency Official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the **Federal Register** of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the Agency Official shall continue to comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council shall comply with the requirements of §§ 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an Agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the Agency Official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the Agency Official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the Agency Official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them.

(2) *Results of consultation.* The Agency Official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The Agency Official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and Local Program Alternatives. (Reserved)

§ 800.16 Definitions.

(a) *Act* means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470–470w–6.

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's ''Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act'' provide further guidance on consultation.

(g) *Council* means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) *Day* or *days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an Agency Official that effectively precludes the Council from providing comments which the Agency Official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) *Indian tribe* means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) *Local government* means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) *Memorandum of Agreement* means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) *National Historic Landmark* means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) *National Register* means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) *National Register Criteria* means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s) *Native Hawaiian organization* means any organization which serves and represents the interests of native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians. ''Native Hawaiian'' means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) *Programmatic Agreement* means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with § 800.14(b).

(u) *Secretary* means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) *State Historic Preservation Officer (SHPO)* means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(w) *Tribal Historic Preservation Officer (THPO)* means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the Act. For the purposes of subpart B of this part, the term also includes the designated representative of an Indian tribe that has not formally assumed the SHPO's responsibilities when an undertaking occurs on or affects historic properties on the tribal lands of the Indian tribe. (See § 800.2(c)(2)).

(x) *Tribal lands* means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

General Policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

Specific Criteria. The Council is likely to enter the section 106 process at the steps specified in this part when an undertaking:

(1) *Has substantial impacts on important historic properties.* This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) *Presents important questions of policy or interpretation.* This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) *Has the potential for presenting procedural problems.* This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

(4) *Presents issues of concern to Indian tribes or Native Hawaiian organizations.* This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: June 30, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–17155 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–10–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of Environmental Assessment and Preliminary Finding of No Significant Impact

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Availability of Environmental Assessment and Preliminary Finding of No Significant Impact.

SUMMARY: An environmental assessment on the Council's proposed regulatory revisions of its rule, published in this issue of the **Federal Register**, was prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the Advisory Council on Historic Preservation's NEPA regulations, 36 CFR part 805. The proposed rule implements Section 106 of the National Historic Preservation Act. The environmental assessment made a preliminary determination that promulgation of the revised rule will not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement will not be necessary. Copies of the environmental assessment and preliminary finding of no significant impact may be obtained by contacting the person listed below. Those interested may submit comments on the environmental assessment and preliminary finding of no significant impact to the address listed below no later than August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Javier Marques, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. (202) 606–8503.

Dated: June 30, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–17156 Filed 7–10–00; 8:45 am]

BILLING CODE 4310–10–M

Federal Register

Tuesday,
July 11, 2000

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 2 et al

Federal Acquisition Regulation; Definitions for Sealed Bid and Negotiated Procurements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 14, 15, 28, 35, and 52

[FAR Case 2000–403]

RIN 9000–AI84

Federal Acquisition Regulation; Definitions for Sealed Bid and Negotiated Procurements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide consistent definitions for sealed bids and negotiated procurements. This case is one of a series of cases in response to the White House memorandum, Plain Language in Government Writing, dated June 1, 1999. The Councils' proposed amendments are intended only to reorganize, simplify, and clarify the FAR. The Councils do not intend to make any substantive change to the FAR by these amendments. Comments should address any potential unintended substantive changes to the FAR resulting from the proposed amendments.

DATES: Interested parties should submit comments in writing on or before September 11, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to:

General Services Administration
FAR Secretariat (MVR)
1800 F Street, NW, Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Submit electronic comments via the Internet to: farcase.2000–403@gsa.gov

Please submit comments only and cite FAR case 2000–403 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 2000–403.

SUPPLEMENTARY INFORMATION:

A. Background

The rule amends the FAR to clarify definitions that are used for sealed bid and negotiated procurements. The rule—

- Moves the definitions of ''bid sample'' and ''descriptive literature'' from FAR Part 14 to FAR 2.101 because the definitions apply to more than one FAR, (*e.g.* Parts 14 and 15).
- Amends those definitions and the definition of ''offer'' in accordance with plain language guidelines;
- Revises applicable provisions in FAR Part 52 to conform with the new definitions;
- Adds a new definition for ''solicitation'' at FAR 2.101;
- Provides definitions for ''bid'' and ''bidder'' in FAR Part 28 because, as used in that part, the terms address sealed bid and negotiated acquisitions; and
- Revises 3.302 by deleting ''invitation for bids'' and substituting ''solicitation.''

We also reviewed every instance where the terms ''offeror,'' ''prospective offeror,'' and ''potential offeror'' are used in the FAR. The rule corrects policy in FAR 15.201(f), 15.609(e), and 35.007(g) because the term ''prospective offeror'' is not used properly. Where we mean an entity that is actively seeking a contract, we use the term ''prospective offeror.'' However, those cites describe processes that are set up to ensure fair and open competition. Therefore, any interested party is able to participate, including parties that the Government has not yet identified. Therefore, the proposed rule uses the more general term ''potential offeror.''

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 3, 14, 15, 28, 35, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–403), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 2, 3, 14, 15, 28, 35, and 52

Government procurement.

Dated: July 5, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 3, 14, 15, 28, 35, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 14, 15, 28, 35, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Bid sample,;'' ''Descriptive literature,'' and ''Solicitation;'' and revise the definition ''Offer'' to read as follows:

2.101 Definitions.

* * * * *

Bid sample means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (*e.g.,* balance, ease of use, or pattern).

* * * * *

Descriptive literature means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

* * * * *

Offer means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for

bids (sealed bidding) are offers called ''bids'' or ''sealed bids;'' responses to requests for proposals in negotiated acquisitions are offers called ''proposals;'' responses to requests for quotations in simplified acquisitions are called ''quotations'' not offers. For unsolicited proposals, see subpart 15.6.

* * * * *

Solicitation means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called ''invitations for bids.'' Solicitations under negotiated procedures are called ''requests for proposals.'' Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. In section 3.302, revise the definition ''Line item'' to read as follows:

3.302 Definitions.

* * * * *

Line item means an item of supply or service, specified in a solicitation, that the offeror must separately price.

PART 14—SEALED BIDDING

4. Amend section 14.201–6 as follows:

(a) Revise paragraph (a);

(b) Remove paragraphs (b)(1) and (b)(2) and redesignate paragraphs (b)(3) and (b)(4) as (b)(1) and (b)(2), respectively;

(c) In paragraph (o)(2), remove ''14.202–4(f)(1)'' and add ''14.202–4(e)(1)'' in its place; and

(d) In paragraph (o)(3), remove ''14.202–4(f)(2)'' and add ''14.202–4(e)(2)'' in its place.

The revised text reads as follows:

14.201–6 Solicitation provisions.

(a) The provisions prescribed in this subsection apply to preparation and submission of bids in general. See other FAR parts for provisions and clauses related to specific acquisition requirements.

* * * * *

14.202–4 [Amended]

5. Amend section 14.202–4 by removing paragraph (a); redesignating paragraphs (b) through (h) as (a) through (g), respectively; and in the newly redesignated paragraph (g) remove ''of'' from the paragraph heading.

6. In section 14.202–5, remove paragraph (a); redesignate paragraphs (b) through (f) as (a) through (e), respectively; and revise the newly designated paragraphs (a) through (e) to read as follows:

14.202–5 Descriptive literature.

(a) *Policy.* Contracting officers must not require bidders to furnish descriptive literature unless it is needed before award to determine whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(b) *Justification.* The contracting officer must document in the contract file the reasons why product acceptability cannot be determined without the submission of descriptive literature, except when the contract specifications require submission.

(c) *Requirements of invitation for bids.* (1) The invitation must clearly state—

(i) What descriptive literature the bidder must furnish;

(ii) The purpose for requiring the literature;

(iii) The extent of its consideration in the evaluation of bids; and

(iv) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the invitation.

(2) If bidders must furnish descriptive literature, see 14.201–6(p).

(d) *Waiver of requirements for descriptive literature.* (1) The contracting officer may waive the requirement for descriptive literature if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids. When the contracting officer waives the requirement, see 14.201–6(p)(2).

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, the contracting officer must include a statement in the invitation that, despite the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature furnished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) *Unsolicited descriptive literature.* If descriptive literature is furnished when it is not required by the invitation for bids, the procedures set forth in 14.202–4(g) must be followed.

PART 15—CONTRACTING BY NEGOTIATION

7. In section 15.201, revise paragraph (f) to read as follows:

15.201 Exchanges with industry before receipt of proposals.

* * * * *

(f) General information about agency mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer must be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, to avoid creating an unfair competitive advantage. Information provided to a potential offeror in response to its request must not be disclosed if it would reveal the potential offeror's confidential business strategy, and is protected under 3.104 or subpart 24.2. When conducting a presolicitation or preproposal conference, materials distributed at the conference should be made available to all potential offerors, upon request.

8. In section 15.609, revise paragraph (e) to read as follows:

15.609 Limited use of data.

* * * * *

(e) Use the notice in paragraph (d) of this section solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, do not use this notice to justify withholding of a record, or to improperly deny public access to a record, where an obligation is imposed by the Freedom of Information Act, 5 U.S.C. 552. An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

* * * * *

PART 28—BONDS AND INSURANCE

9. Revise section 28.000 to read as follows:

28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against losses under contracts that result from

use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance.

10. Amend section 28.001 as follows:

(a) Add an introductory paragraph;

(b) In the definitions ''Attorney-in-fact,'' ''Insurance,'' and ''Power of attorney,'' remove '', as used in this part,''; and

(c) Add the definitions, in alphabetical order, ''Bid'' and ''Bidder'' to read as follows:

28.001 Definitions.

As used in this part:

* * * * *

Bid means any response to a solicitation, including a proposal under a negotiated acquisition. See the definition of ''offer'' at 2.101.

* * * * *

Bidder means any entity that is responding or has responded to a solicitation, including an offeror under a negotiated acquisition.

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

11. In section 35.007, revise paragraph (g) to read as follows:

35.007 Solicitations.

* * * * *

(g) The contracting officer should ensure that potential offerors fully understand the details of the work, especially the Government interpretation of the work statement. If the effort is complex, the contracting officer should provide potential offerors an opportunity to comment on the details of the requirements in the work statement, the contract Schedule, and any related specifications. This may be done at a preproposal conference (see 15.201).

* * * * *

PART 52—SOLICITATION PROVISIONS AND REMOVED AND CONTRACT CLAUSES

52.214–1 [Reserved]

12. Section 52.214–1 is removed and reserved.

13. In section 52.214–20, revise the introductory text, the date of the provision, paragraphs (a), (b), and the introductory text of paragraph (c); and in Alternate I and Alternate II remove ''14.202–4(f)(1)'' and add ''14.202–4(e)(1)'', in their places, respectively. The revised text reads as follows:

52.214–20 Bid samples.

As prescribed in 14.201–6(o)(1), insert the following provision:

Bid Samples (Date)

(a) *Bid sample* means a product sample required to be submitted by a bidder to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid (*e.g.,* balance, ease of use, or pattern).

(b) Bidders must furnish bid samples as part of the bid. The Government must receive the bid samples by the time specified in the invitation for bid. If the bidder fails to submit samples on time, the Government will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The Government will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The Government will reject the bid when the bid fails to conform to the required characteristics. Products delivered under any resulting contract must conform to—

* * * * *

(End of Provision)

14. Revise section 52.214–21 to read as follows:

52.214–21 Descriptive Literature.

As prescribed in 14.201–6(p)(1), insert the following provision:

Descriptive Literature (Date)

(a) *Descriptive literature* means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as—

(1) Design;

(2) Materials;

(3) Components;

(4) Performance characteristics; and

(5) Methods of manufacture, assembly, construction, or operation.

(c) Descriptive literature, required elsewhere in this solicitation, shall be—

(1) Identified to show the item(s) of the offer to which it applies; and

(2) Received by the time specified in this solicitation.

(d) If the bidder fails to submit descriptive literature on time, the Government will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(e) If the descriptive literature fails to show that the product offered conforms to the requirements of this solicitation, the Government will reject the bid.

(End of Provision)

Alternate I (Date). As prescribed in 14.201–6(p)(2), add the following paragraphs (f) and (g) to the basic provision.

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder requesting a waiver of this requirement shall provide the following information:

Prior contract number_____ _____

Date of prior contract_____ _____

Contract line item number of product supplied_____ _____

Name and address of Government activity to which delivery was made_____ _____

Date of final delivery of product supplied_____ _____

(g) Bidders shall submit offers on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. The Government will disregard a bidder's request for a waiver under paragraph (f), if that bidder has submitted the descriptive literature required under this solicitation.

[FR Doc. 00–17375 Filed 7–10–00; 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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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 642/P.L. 106–231

To redesignate the Federal building located at 701 South Santa Fe Avenue in Compton, California, and known as the Compton Main Post Office, as the ''Mervyn Malcolm Dymally Post Office Building''. (July 6, 2000; 114 Stat. 484)

H.R. 643/P.L. 106–232

To redesignate the Federal building located at 10301 South Compton Avenue, in Los Angeles, California, and known as the Watts Finance Office, as the ''Augustus F. Hawkins Post Office Building''. (July 6, 2000; 114 Stat. 485)

H.R. 1666/P.L. 106–233

To designate the facility of the United States Postal Service at 200 East Pinckney Street in Madison, Florida, as the ''Captain Colin P. Kelly, Jr. Post Office''. (July 6, 2000; 114 Stat. 486)

H.R. 2307/P.L. 106–234

To designate the building of the United States Postal Service located at 5 Cedar Street in Hopkinton, Massachusetts, as the ''Thomas J. Brown Post Office Building''. (July 6, 2000; 114 Stat. 487)

H.R. 2357/P.L. 106–235

To designate the United States Post Office located at 3675 Warrensville Center Road in Shaker Heights, Ohio, as the ''Louise Stokes Post Office''. (July 6, 2000; 114 Stat. 488)

H.R. 2460/P.L. 106–236

To designate the United States Post Office located at 125 Border Avenue West in Wiggins, Mississippi, as the ''Jay Hanna 'Dizzy' Dean Post Office''. (July 6, 2000; 114 Stat. 489)

H.R. 2591/P.L. 106–237

To designate the United States Post Office located at 713 Elm Street in Wakefield, Kansas, as the ''William H. Avery Post Office''. (July 6, 2000; 114 Stat. 490)

H.R. 2952/P.L. 106–238

To redesignate the facility of the United States Postal Service located at 100 Orchard Park Drive in Greenville, South Carolina, as the ''Keith D. Oglesby Station''. (July 6, 2000; 114 Stat. 491)

H.R. 3018/P.L. 106–239

To designate certain facilities of the United States Postal Service in South Carolina. (July 6, 2000; 114 Stat. 492)

H.R. 3699/P.L. 106–240

To designate the facility of the United States Postal Service located at 8409 Lee Highway in Merrifield, Virginia, as the ''Joel T. Broyhill Postal Building''. (July 6, 2000; 114 Stat. 494)

H.R. 3701/P.L. 106–241

To designate the facility of the United States Postal Service located at 3118 Washington Boulevard in Arlington, Virginia, as the ''Joseph L. Fisher Post Office Building''. (July 6, 2000; 114 Stat. 495)

H.R. 4241/P.L. 106–242

To designate the facility of the United States Postal Service located at 1818 Milton Avenue

in Janesville, Wisconsin, as the ''Les Aspin Post Office Building''. (July 6, 2000; 114 Stat. 496)

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